Supreme Court, U. S.
FILED
DEC 21 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-775

THE CITY OF NEW ORLEANS AND HONORABLE MOON LANDRIEU,

Appellant,

versus

NANCY DUKES, d/b/a LOUISIANA CONCESSIONS,

Appellee.

Appeal from the United States Court of Appeals for the Fifth Circuit

JURISDICTIONAL STATEMENT

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Appeal from the United States Court of Appeals For The Fifth Circuit

JURISDICTIONAL STATEMENT

STATEMENT AS TO JURISDICTION

The appellant, pursuant to United States Supreme Court Rules 13(2) and 15, files this statement in support of its contention that the Supreme Court of the United States has jurisdiction on a direct appeal to review the judgment in question, and should exercise such jurisdiction in this case.

OPINION BELOW

The United States Court of Appeals for the Fifth Circuit filed its written opinion on September 27, 1974, which is not yet reported. A copy of the opinion is attached to this jurisdictional statement as Appendix A.

The appeal herein is from a final judgment handed down by the United States Court of Appeals for the Fifth Circuit on September 27, 1974, which held that:

> "Nancy Dukes has overcome the presumption of constitutionality of the New Orleans ordinance's 'grandfather clause' by demonstrating the insubstantiality of the relation between the nature of the discrimination and the legitimate governmental interest in conserving the traditional aspects of the Vieux Carre . . . It is enough that the sum of the constitutional considerations examined outweighs the legislative presumption, so that we are not driven to balance each individual factor."

The court further held the ordinance "unconstitutional as applied" and reversed a summary judgment which had been entered for appellant in the instant matter.

The Supreme Court of the United States has jurisdiction to review by direct appeal the opinion complained of by virtue of 28 U.S.C. §1254 (2).

The following decisions sustain the jurisdiction of this Court to review the opinion on direct appeal in this case. *United Gas Pipe Line Company v. Ideal Cement Company*, 369 U. S. 134 (1961); *Watson v. Employers Liability Assurance Corp.*, 348 U. S. 66 (1954), *rehearing denied* 348 U. S. 921 (1954).

The municipal ordinance of the City of New Orleans declared unconstitutional by the Fifth Circuit Court of Appeals provides:

> Vendors who have continuously operated the same business within that area under the authority of this chapter for eight (8) or more years prior to January 1, 1972 may obtain a valid permit to operate such business within that area.

The United States Court of Appeals for the Fifth Circuit held that the "grandfather clause" of the questioned ordinance in its application to sidewalk hot dog vendors could not withstand an attack under the Equal Protection Clause of the Constitution, under the decisions of this court in *Morey v. Doud*, 354 U. S. 464, 77 S. Ct. 1344 (1957), and *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison*, 301 U. S. 459, 57 S. Ct. 838 (1937).

QUESTIONS PRESENTED

The Court Of Appeals For The Fifth Circuit Erred:

I. IN FAILING TO RECOGNIZE THAT THE FRENCH QUARTER (VIEUX CARRE), THE HEART OF TOURISM IN THE CITY OF NEW ORLEANS, MUST, OF NECESSITY BE HIGHLY REGULATED IN ORDER TO MAINTAIN ITS DISTINCTIVE CHARM AND BEAUTY;

AS ANY ADVERSE EFFECT ON ITS HISTORIC CHARACTER SEVERELY JEOPARDIZES THE ECONOMIC WELL-BEING OF THE ENTIRE CITY AND THEREFORE THE ORDINANCE IS DESERVING OF A MUCH MORE LIBERAL INTERPRETATION THAN THAT HANDED DOWN BY THE FIFTH CIRCUIT COURT OF APPEAL.

II. IN HOLDING AND CONCLUDING THAT THE PRESENT POSTURE OF THE MUNICIPAL ORDINANCES WAS VIOLATIVE OF EQUAL PROTECTION PRINCIPLES.

III. IN HOLDING AND CONCLUDING THAT THE RATIONALE OF THE NEW ORLEANS CITY COUNCIL IN ADOPTING THE QUESTIONED ORDINANCES WAS INSUFFICIENT TO SUPPORT THE DISCRIMINATION THEREBY IMPOSED.

IV. IN HOLDING AND CONCLUDING THAT NANCY DUKES HAD OVERCOME THE PRESUMPTION OF CONSTITUTIONALITY OF THE NEW ORLEANS ORDINANCE'S "GRANDFATHER CLAUSE" BY DEMONSTRATING THE INSUBSTANTIALITY OF THE RELATION BETWEEN THE NATURE OF THE DISCRIMINATION AND THE LEGITIMATE GOVERNMENTAL IN-

TEREST IN CONSERVING TRADITIONAL ASPECTS OF THE VIEUX CARRE.

V. IN HOLDING AND CONCLUDING THAT IN THEIR PRESENT POSTURE THE QUESTIONED ORDINANCES WERE UNCONSTITUTIONAL AS APPLIED.

STATEMENT OF THE CASE

Plaintiff Nancy Dukes brought this action against the City of New Orleans and the Honorable Mayor Moon Landrieu alleging a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

Before January 1, 1972, Dukes was in the business of selling food, drinks, confections, and novelties from push carts throughout the City of New Orleans. Subsequently the New Orleans City Council revised its ordinances, removing hot dog vendors from the list of specifically permitted pushcart enterprises in the Vieux Carre, but simultaneously allowing all licensed vendors who had continuously operated the same such licensed business in the Quarter for eight years prior to January 1, 1972, to continue selling. Since Dukes' operation was only a year old, the effect of this revision was to eliminate her from the Vieux Carre market, but left the remainder of the city open to her. On January 17, 1972, one of Dukes' employees was arrested for violating New Orleans City Ordinance 828 M.C.S. 46-1.1 As a result of this arrest, Dukes initiated a Civil Suit in the United States District Court for the

Eastern District of Louisiana, New Orleans Division on August 1, 1972, seeking declaratory and injunctive relief against defendants alleging that 46-1 and 46-1.1 were arbitrary, unreasonable and denied her due process and equal protection as guaranteed by the United States Constitution.

As there was no factual dispute to be resolved, cross motions for summary judgment were filed by both parties and after argument the Honorable Judge Jack Gordon granted defendant's motion, denied plaintiff's motion and dismissed the suit.

From that judgment plaintiff appealed to the United States Court of Appeals, Fifth Circuit. Said Honorable Court concluded that, under the guiding principles of *Morey v. Doud*, 354 U. S. 457, 77 S. Ct. 1344 (1957), the ordinances in question as applied to Nancy Dukes deprived her of equal protection of the laws. The Court reversed and remanded the judgment appealed from, holding that the classificatory ordinances were not rationally guided and could not withstand constitutional attack.

THE QUESTIONS SUBMITTED ARE SUBSTANTIAL

The Fifth Circuit Court of Appeals has held the questioned ordinance(s) "unconstitutional as applied." The judgment of the Court of Appeals is the proper subject of this appeal. Under 28 U.S.C. § 1254 (2) there is specific provision for appeals where an appellate court has held a state statute to be repugnant to the constitution, laws, or treaties of the United States. For the purposes of this provision, a "state statute" includes a

municipal ordinance. See *United Gas Pipe Line Co. v. Ideal Cement Co.*, 369 U. S. 134, 82 S. Ct. 676, 7 L.Ed.2d 623 (1962). This Court has held that an appeal under this statute may only be taken from a final judgment, although the statute does not so require and finality is not required for review of other decisions of the Courts of Appeals. This seems a doubtful limitation, and the decisions so holding are arguably no longer authoritative. In a more recent case this court expressly asked for argument on that point, but avoided deciding it when it found that the judgment in the case before it was actually a final judgment. *City of Chicago v. Atchison, T. & S. F. Ry. Co.*, 357 U. S. 77, 78 S. Ct. 1063, 2 L.Ed.2d 1174 (1958). This same question was also left open in *City of El Paso v. Simmons*, 379 U. S. 497, 85 S. Ct. 577, 13 L.Ed.2d 446 (1965). Alternatively, the decision of the Fifth Circuit was a final decision, in that the District Court on remand only has to determine whether the questioned grandfather clause "was severable from the ordinance's simultaneous general preclusion of pushcart hot dog vendors from the Quarter, that is, whether the ordinance should be read as a total nullity, or whether it should be read to preclude the operation of all pushcart hot dog dealers in the Vieux Carre." In either case the Court of Appeals did *finally determine* that the grandfather clause was unconstitutional.

I.

ARE 828 MCS 46-1 AND 46-1.1 UNCONSTITUTIONAL?

Article XIV Section 22 of the Constitution of the State of Louisiana provides, in pertinent part:

"§22. New Orleans; election of officers; form of government; powers; *home rule charters*

Section 22. The electors of the City of New Orleans and of any political corporation which may be established within the territory now, or which may hereafter be embraced within the corporate limits of said city, shall have the right to choose their public officers, and the form of government of said city.

Subject to the limitations elsewhere contained in this Constitution, *the City of New Orleans is hereby declared to have a home rule charter.*

The City of New Orleans, in addition to the powers expressly conferred upon it by Act 159 of 1912, as amended through the Regular Legislative Session of 1950, shall have the right and authority to adopt and enforce local police, sanitary and similar *regulations* and *to do and perform all of the acts pertaining to its local affairs, property* and government, which are necessary or proper in the legitimate exercise of its corporate powers and municipal functions."

Chapter 8 of Article V of the Home Rule Charter, entitled "The Vieux Carre Commission" states the powers of the City Council in maintaining the charm, character and economic viability of the Vieux Carre as follows:

"Section 5-803 Enforcement. The Council shall by ordinance or otherwise carry into effect provisions of the Constitution relative to the

Vieux Carre Section and shall provide for the enforcement of such provisions by appropriate legal proceedings including resort to injunctive process."

The question now becomes whether or not 828 MCS 46-1 and 46-1.1 are able to withstand plaintiff's attack on their constitutionality as a violation of the "Due Process" and "Equal Protection" clauses of the Fourteenth Amendment to the United States Constitution.

A. Are All Types Of Discrimination Prevented By The Due Process And Equal Protection Clauses?

In the well known case of *Oregon v. Mitchell,* 400 U. S. 112, 125, 91 S. Ct. 260, 265 (1970) the United States Supreme Court said of discriminatory laws:

"It cannot be successfully argued that the Fourteenth Amendment was intended to strip the States of their power, carefully preserved in the original Constitution, to govern themselves. The Fourteenth Amendment was surely not intended to make every discrimination between groups of people a constitutional denial of equal protection."

This is an indication that the Fourteenth Amendment is not to be interpreted as an overall prohibition against any and all types of discriminatory classification or treatment under state law. In *Lehnhouser v. Lake Shore Auto Parts Co.,* 93 S. Ct. 1001 (1973) the Court stated that the:

> "Equal protection clause does not mean that a state may not draw lines that treat one class of individuals or entities different from the others, and the test is whether the difference in treatment is an invidious discrimination."

Accord: *League of Academic Women v. Regents of University of California*, 343 F. Supp. 636 (N.D. Cal. 1973) where it was held that:

> "It is a far different thing to say that a statute extends a right to one group while denying it to another, than it is to say that a statute provides the same rights to everyone, but does not extend an additional right to any of them . . . The Fourteenth Amendment is not a mandate that every statute must be read to outlaw all forms of discrimination."

These cases represent only a small sample of a long line of jurisprudence upholding differences in statutory classification. They exemplify the fact that society today still provides for and maintains certain forms of necessary discrimination. By these statutory classifications the state is attempting to achieve and maintain the general welfare of its citizens. Society's interests are weighed against the rights of particular individuals. There exists a compelling societal interest in these types of cases that predominates over individual rights and privileges.

This is precisely the issue involved in the case at bar. The interests of the City of New Orleans and the State of Louisiana are vitally affected by that section of the City known as the Vieux Carre. The economic welfare of the

City of New Orleans rests on this specially designated area. It is the heart of the City's tourist industry. The incalculable value of this tourist trade prompted the City Council to adopt ordinances to preserve the integrity and to insure the economic viability of the area in a way most conducive to both tourist and citizen alike. This then is the compelling interest of the city which necessitated the enactment of the ordinance in question. No tourist or citizen appreciates peddlers or hawkers interferring with their rights to observe and enjoy the charm and beauty of the New Orleans Vieux Carre. Equal protection does not require that statutes never distinguish between citizens but only that distinctions that are made not be arbitrary or invidious.

In perhaps the landmark case in this area this Court held:

> "The Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the State's objective . . . *A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.*" *McGowan vs. Maryland*, 366 U.S. 420, 81 S. Ct. 1101 (1961).

We reiterate the fact that the City of New Orleans has a valid compelling interest in protecting and preserving the Vieux Carre both as a valuable and productive tourist attraction as well as a beautiful and natural respite for its

citizens to enjoy. This protection and preservation is impeded by the indiscriminate allowance of peddlers and hawkers to confront tourists and citizens. The fact that some peddlers are allowed to peddle and not the plaintiff in this action only tends to demonstrate the City Council's interest in keeping the Vieux Carre the tourist attraction it has always been. The Council sought to allow only those peddlers to remain who have over a long period of time become a *part* of the unique charm and beauty that is characteristic of the Vieux Carre.

Lucky Dogs, Inc., in whose favor the questioned ordinances allegedly produced a monopoly has been operating its same business in the Vieux Carre for over twenty years. It has been and still is selling hot dogs from distinctive little carts, which are actually enlarged model versions of the product itself. Tourists, and citizens alike, for years have seen these carts spotted throughout the French Quarter, as a pleasant nostalgic reminder of their visit to the French Quarter, and often seek them out to photograph. The Fifth Circuit itself noted that the City might regulate the appearance of the pushcarts to satisfy the same concerns that prompted the ordinance. These quaint little carts, over the years have become as common a sight in the Vieux Carre as horse drawn carriages. They form an integral part of the atmosphere which makes the French Quarter the focal point of tourism in the City of New Orleans. Appellants respectfully reiterate the fact that the City most definitely has a compelling interest in maintaining the economic viability of this area, and in protecting it from the eroding effects which indiscriminate allowance of peddlers and hawkers would involve.

In the recent case of *Frontiers v. Richardson*, 411 U. S. 677, 93 S. Ct. 1764 (1973) the Court flatly stated:

> "Under 'traditional' equal protection analysis, a legislative classification must be sustained unless it is 'patently arbitrary' and bears no rational relationship to a legitimate governmental interest."

Accord: *Jefferson v. Hackney*, 406 U. S. 535, 546, 92 S. Ct. 1724, 1731 (1972); *Richardson v. Belcher*, 404 U. S. 78, 81, 92 S. Ct. 254, 257 (1971); *Fleming v. Nestor*, 363 U. S. 603, 611, 80 S. Ct. 1367, 1372 (1960); *McGowan v. Maryland*, supra; *Dandridge v. Williams*, 397 U. S. 471, 485, 90 S. Ct. 1153, 1161 (1970); *McDonald v. Board of Election Com'rs of Chicago*, 394 U. S. 802, 89 S. Ct. 1404 (1969); *U.S. Department of Agriculture v. Moreno*, 93 S. Ct. 2821 (1973).

In the *McDonald* case cited supra and also in the case of *Reed v. Reed*, 404 U. S. 71, 92 S. Ct. 251 (1971) the Supreme Court again emphasized the fact that it did allow certain discriminatory statutory law:

> "The Equal protection clause of the Fourteenth Amendment does not deny to states the power to treat different classes of persons in different ways; the clause does, however, deny the states the power to legislate that different treatment be accorded to persons or places by statute into different classes on basis of criteria wholly unrelated to the objective of that statute."

See also: *Eisenstadt v. Baird*, 405 U. S. 438, 92 S. Ct. 1029 (1972).

The court went on in *Reed* to say that:

> "In order not to violate the equal protection clause a statutory classification must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

Applying these standards to the issue at bar defendants show that the ordinance in question is not violative of constitutional mandates in that it is patently reasonable and not arbitrary since its exclusion of certain peddlers is based on fair criteria that attempts to maintain the traditional atmosphere of the Vieux Carre which is so vitally necessary for its economic viability and the benefits derived by all citizens of New Orleans therefrom. This clearly is a compelling and valid objective.

See: *Turner v. Fouche*, 396 U. S. 346, 90 S. Ct. 532 (1970) where it was held that:

> "The traditional test for denial of equal protection is whether the challenged classification rests on grounds wholly irrelevant to the achievement of valid state objectives."

and: *Police Department of City of Chicago v. Mosley*, 408 U. S. 92, 92 S. Ct. 2286 (1972) in which the court succinctly stated:

> "Crucial in equal protection cases is whether

> there is an appropriate governmental interest suitably furthered by the differential treatment."

It is patently obvious that the economic viability of an area of a city is a valid and compelling purpose that should merit the government's protection through legislation; and, if this area of the city also is vitally important in maintaining the overall economic well-being of the entire city, as is the Vieux Carre, then the interest in closely legislating and protecting the viability of the area is even more compelling. It is only invidious, unnecessary, and totally arbitrary classifications and treatment that the spirit and the letter of the Fourteenth Amendment prohibit. A classification or a statute having some reasonable basis does not offend the Constitution merely because it is not made with mathematical nicety, or the practice results in some inequality. The city should not be caused to lose its entire remedial scheme merely because it failed to cover every peddler at one time. It has been held that:

> "If the classification . . . is shown to have a substantial relationship to a lawful objective and is not void for other reasons, such as over-breadth, it will be upheld . . ." *Boroas v. Village of Belle Terre*, 476 F.2d 806 (2nd Cir. 1973)

Accord: *Godwin v. Patterson*, 363 F. Supp. 238 (M.D. Ala. N.D., 1973).

As this Court stated in *Norvell v. State of Illinois*, 373 U. S. 420, 83 S. Ct. 1366 (1963):

> "Exact equality is no prerequisite of equal protec-

tion of the laws within the meaning of the Fourteenth Amendment . . . *The rough accommodations made by government do not violate the equal protection clause unless the lines drawn are hostile and invidious.*"

and in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 93 S. Ct. 1224 (1973):

> "The equal protection clause does not make every minor difference in the application of laws to different groups a violation of our Constitution."

B. Does The Fourteenth Amendment Protect Plaintiff's Economic Interests?

This Court in the case of *Weber v. Aetna Casualty and Sur. Co.*, 406 U. S. 164, 92 S. Ct. 1400 (1972) stated that:

> "The essential inquiry . . . [in determining the validity of a state statute under the equal protection clause] . . . is a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?"

Also in the case of *Kramer v. Union Free School District No. 15*, 395 U. S. 621, 89 S. Ct. 1886 (1969), this Court held:

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the

> law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification."

Accord: *Williams v. Rhodes*, 393 U. S. 23,30, 89 S. Ct. 5, 10 (1968).

The case at bar necessarily involves a weighing process concerning the interests of the City of New Orleans and those of the plaintiff, Nancy Dukes. As we have previously shown, the ordinance in question is attempting to protect the charm, beauty and tradition that are so vitally necessary for the economic productivity of an entire area of the City as well as that of the City itself. To this end the City has a valid and compelling interest in preventing the enjoyment of this area by tourists and citizens alike from being hindered and lessened by the intervention of innumerable peddlers and hawkers physically soliciting and bothering them so as to lessen their enjoyment of the Vieux Carre. Plaintiff is attempting to protect an alleged right to sell her goods in the Vieux Carre from interference by the City. It is most vehemently argued that while plaintiff is free to sell her wares anywhere else in the entire City, the prevention of their sales in the Vieux Carre does not endanger or invade any fundamental personal right possessed by the Plaintiff. Rather, her right to sell food, soft drinks and confections in the Vieux Carre must be balanced against the City's compelling interest in preserving this area for its very economic well-being; for if both citizens and tourists alike are bothered to the extent that they cease to frequent the Vieux Carre then the economic stability of the entire city will be in severe jeopardy.

In the case of *Levy v. Louisiana*, 391 U. S. 68, 88 S. Ct. 1509 (1968), this Court held that:

> "In applying the equal protection clause to social and *economic* legislation, we give great latitude to the legislature in making classifications."

And even more succinctly in *Palmer v. Thompson*, 403 U. S. 217, 91 S. Ct. 1940 (1969) the Court held:

> "The right to equal protection does not promise or guarantee economic or financial equality."

Likewise in the case of *San Antonio Independent School District v. Rodriquez*, 411 U. S. 1, 93 S. Ct. 1278 (1973) the Court said:

> ". . . at least where wealth is involved the Equal Protection Clause does not require absolute equality or precisely equal advantages."

In the case of *In Re Hoover*, 447 F.2d 195 (5th Cir. 1971) a Louisiana statute affording preferential treatment of sellers of goods sold in the state over sellers of goods sold outside the state was held not so unreasonable and arbitrary as to be invidiously discriminating and violative of the equal protection clause.

These cases lend credence to the assertion that the spirit of the Fourteenth Amendment is designed to protect the more fundamental and personal rights from invidious discrimination or interference by state or municipal statutory law.

It is patently obvious that merely because an individual may be at some economic disadvantage this does not automatically make him the victim of an arbitrary, unreasonable and invidious discrimination which is violative of the equal protection clause, particularly where the state demonstrates a necessary and compelling interest necessitating the legislation.

One final point mentioned in *McGowan*, supra, is that the equal protection clause relates to equality between *persons* as such, rather than between areas and therefore territorial uniformity is not a constitutional prerequisite within the ambit of the equal protection clause of the Fourteenth Amendment.

It is respectfully submitted that this is precisely the point in the instant matter for all Dukes is asserting is that she cannot go into the Vieux Carre and sell her food, soft-drinks and confections from pushcarts while she *can* ply her trade in the rest of the city. This is no equal protection argument at all particularly in view of *McGowan* and the fact that she is advancing a territorial argument and *not* a personal argument and particularly in view of the fact that in her brief to the 5th Cir. Court of Appeals, she is apparently now seeking only to sell hot dogs and therefore has abandoned her previous argument that there is an inequality between her and the *persons* who validly come under 828 MCS 46-1 and 46-1.1.

C. Are All Legislative Monopolies Unlawful

The Court of Appeals in its decision states that:

> "Of course it is true that not every statute

> treating uniquely some individual enterprise or some closed class of enterprises is constitutionally objected. Nevertheless, the creation of a protected monopoly for the favored class member is a significant factor to be considered in assessing the nature of the discrimination here."

Such a concept is precisely the point. The fact that only Lucky Dogs, Inc. qualified under the ordinance is expressive of the intent of the New Orleans City Council in enacting such ordinances dealing exclusively with the French Quarter. This section of the City is afforded special treatment in the City's Municipal Code. The alleged monopoly in the case at bar was incidentally created by the city in its effort to maintain, as is, its main tourist attraction. The questioned grandfather clause is illustrative of the desire, not to favor particular businesses, but to maintain only those features which over the years, over a score of years in this case, have become landmarks in this area of the City of New Orleans. It is an entire area of the City which is intentionally preserved, and not individual establishments. Such intent should be viewed in its entirety, and not dissected into each of its incidental side efforts. We urge this Honorable Court, therefore, to consider that such action on the part of the City of New Orleans represents a legitimate and compelling governmental interest in that the economic well-being of an entire city largely hinges on revenues derived from tourism generated in this distinctive area.

Consequently, based on appellants' assertion that the ordinances questioned in the case at hand represent legitimate governmental and legislative activity, any incidental adverse effects created thereby are outweighed

by compelling state interests and therefore not objectionable. More specifically, the alleged monopoly found by the Court of Appeals to have been created by the ordinances, was the result of valid and compelling legislative activity, and therefore not prohibited.

Similar monopolies legislatively created because of valid governmental interests have been upheld. In the case of *Ladue Local Lines, Inc. v. Bi-State Development Agency of The Missouri-Illinois Metropolitan District,* 433 F.2d 131 (1970) it was stated:

> "We deem it well settled that when a state announces a public policy against free competition in an industry essential to it, state control and regulation of that industry, even to the extent of eliminating competition, is permissible."

Also in the case of *Nebbia v. New York,* 291 U. S. 502, 529-530, 538, 54 S. Ct. 505, 512-513, 516, 78 L.Ed. 940 (1934) it was held:

> "The public policy with respect to free competition has engendered state and federal statutes prohibiting monopolies, which have been upheld. On the other hand, where the policy of the state dictated that a monopoly should be granted, statutes having that effect have been held inoffensive to the constitutional guarantees. Moreover, the state or a municipality may itself enter into business in competition with private proprietors, and thus effectively although indirectly control the prices charged by them.

> "If the lawmaking body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition an inadequate safeguard of the consumer's interests, produce waste harmful to the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the Legislature to be fair to those engaged in the industry and to the consuming public."

Accord: *Heath v. Aspen Skiing Corporation*, 325 F. Supp. 223 (1971); *Sun Valley Disposal Co. v. Silver State Taxicab Operators' Ass'n. v. Yellow Cab Co.*, 278 F. Supp. 979 (1968).

CONCLUSION

It is respectfully submitted, that the decision of the Fifth Circuit, in holding that the rationale behind the questioned ordinances was insufficient to withstand attack, was erroneous in that said rationale represented a compelling governmental interest on the part of the city of New Orleans. This decision has wide ramifications, in that it could affect all alleged monopolies legislatively created in the public interest. Any governmental activity which resulted in such territorial discrimination could be challenged under this decision. We believe that the questions submitted are truly substantial and represent

to this Court far reaching issues of the most vital public importance that must be answered.

Respectfully submitted,

Joel P. Loeffelholz
Assistant City Attorney
Attorney for Appellant

Blake G. Arata
City Attorney

CERTIFICATE

The undersigned hereby certifies that a true and correct copy of the above and foregoing has been served on counsel of record by depositing same in the United States mail, postage prepaid, properly addressed this ____ day of December, 1974.

APPENDIX A

CHAPTER 46

PERMITS[1]

Section 46-1. Permits required for various callings or occasions; schedule of fees therefor.[2]

Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however are not valid within the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South, except as provided in Section 46-1.1 of this chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:

(1) A. Definitions:

1. "Mardi Gras Season" is defined as those days and nights commencing eleven (11) days before Mardi Gras and continuing until midnight on Mardi Gras day.

2. "Parade Route" is defined as that area extending one (1) city block in either direction of the streets used by the various parades while the parade is in progress.

3. "Parade Time" is defined as that time commencing two (2) hours before the starting time of a parade and ending two (2) hours after the passing of a parade, but no vendor shall sell or display his wares within the Central Business

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1. For charter provisions with respect to permits, including a definition of "permit" as there used, see Char., §§ 4-701 and 4-702. For provisions requiring a permit for engaging in various occupations or undertakings dealt with in the other chapters hereof, see those chapters.

2. For licenses on other coin operated machines, see Chapter 16, Coin Operated Machines.

District which is defined as the area bounded by the River, Esplanade Avenue, Claiborne Avenue and Howard Avenue, prior to 6:00 p.m. on weekdays, except Mardi Gras Day. On weekends and on Mardi Gras Day when there is more than one parade on any calendar day the vendor must move two (2) hours after the end of the last parade for that calendar day.

4. "Vehicle" is defined as a conveyance which is licensed by the Motor Vehicle Division of the Louisiana State Department of Safety.

B. To sell the following items on city streets along the designated "parade route" during Mardi Gras Season:

1. For a fixed location:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) $50.00
(2) Candy, nuts and confections 50.00
(3) Novelties 50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras Season. This deposit will be forfeited thirty (30) days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, may set up their vehicles during "parade time" only.

(e) When the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the

City shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance #828, M.C.S., Code of the City of New Orleans, relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width. Vendors must sell and display from a "vehicle"; no stands, card tables or the like shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(h) All vendors selling from fixed locations shall have the Mayoralty Permit as provided for in this section publicly displayed at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras Mayoralty Permits shall be issued for vendors from fixed locations on public streets, sidewalks, alleys, parks or squares in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(j) All applicants for Mardi Gras Mayoralty Permits to sell food and/or drinks on public or private property must show proof of compliance with all regulations and requirements of the City Board of Health and the Department of Fire, Fire Prevention Bureau before permit can be issued.

2. For Moving Locations:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) $25.00

(2) Candy, nuts and confections 50.00
(3) Novelties 50.00

(b) There shall be a $25.00 deposit on each permit to guarantee payment of sales tax as provided in Section 56-41, of Ordinance #828, M.C.S., Code of the City of New Orleans, at the end of the Mardi Gras Season. This deposit will be forfeited 30 days after Mardi Gras, if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) All moving vendors must keep moving except when making a sale. No stands, card tables or the like, except hand-carried displays shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(d) For each permit issued one (1) Mardi Gras Mayoralty Badge with a corresponding number shall be purchased by the permittee from the Department of Finance, which badge must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this Chapter.

(e) Mardi Gras Mayoralty Permits for moving locations shall be invalid in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(f) Mardi Gras Mayoralty Permits for moving locations shall only be valid during "parade time" along designated "parade routes".

(2) To sell novelties on the city streets other than during the Mardi Gras season.
Per sales outlet, for one year ..... $ 25.00

(3) To sell candies, nuts and confections on foot or from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets or public piaces other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(6) To peddle cooked food, cakes, pies, etc., other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places.
Per sales outlet, per year ..... $ 25.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles.
Per vehicle, per year ..... $ 50.00

(9) To sell home-manufactured articles or home-grown products on foot.
Per year ..... $ 25.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square.
Per year ..... $ 40.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc., on city streets or public places.
Per year ..... $ 15.00

(12) To sell tickets to supper to be held in private homes.
Per event ..... $ 15.00

(13) Demonstrations of food products or devices in public places or markets, etc.
Per engagement ..... $ 25.00

(14) To distribute samples, canvass on city streets or from house to house.
(a) For crew manager, per year ..... $ 25.00
(b) For each crew member, per year 15.00

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property.
(a) Per year $100.00
(b) Per month 15.00

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed.
Per year ..... $ 25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph.
Per year $250.00

(18) To operate a hand organ in the city streets.
Per year ..... $ 15.00

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Section 51:31 to 51:41 of the Revised Statutes of Louisiana.
Per sale ..... $ 25.00

(20) Weighing devices, etc. on sidewalks or in public places.
Per nickel machine, per year ..... $ 25.00
Per penny machine, per year 15.00

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted.
Per month ..... $ 25.00

(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis.
Per year in addition to license $100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.
Per year $100.00

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:
(a) Admission not more than 75¢ per event ... $ 15.00
(b) Admission more than 75¢ per event 25.00

(25) For amateur and professional prizefights or boxing and wrestling contests:
(a) Admission not more than 75¢ per event .... $ 15.00
(b) Admission more than 75¢ per event 25.00

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals, bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected.
(a) Admission not more than 75¢ or by invitation
Per event ..... $ 15.00
(b) Admission more than 75¢ per event 25.00

(27) For Carnival Balls ..... $ 25.00

(28) For philharmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner.
(a) Admission not more than 75¢ or by invitation
Per event ..... $ 15.00
(b) Admission more than 75¢ 25.00

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged.
Per year ..... $ 50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted.
Per year ..... $ 25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner.
Per year ..... $ 100.00

(32) For dancing when admission is charged:
(a) Admission not more than 75¢ per event ..... $ 15.00
(b) Admission not more than $1.99 per event ..... $ 25.00
(c) Admission $2.00 or more per event $ 50.00

(33) For a private dance in a public hall.
Per event ..... $ 15.00

(34) To give a rummage sale.
Per event ..... $ 15.00

(35) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof.
Per location, per year ..... $ 250.00

(36) To sell flowers on the city sidewalks or streets.
Per sales outlet, per year ..... $ 50.00

(37)—(40) Reserved.

(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or unnatural sex acts or otherwise appeal to sexually prurient interests and which establishments cater exclusively to adults $10,000.00

(C.C.S., Ord. No. 15,510, § 1; C.C.S., Ord. No. 17,633, § 1; C.C.S., Ord. No. 17,989, § 3; M.C.S., Ord. No. 3027, § 1, 3-4-65; M.C.S., Ord. No. 4346, § 1, 7-16-70; M.C.S., Ord. No. 4359, § 1, 8-6-70; M.C.S., Ord. No. 4360, § 1, 8-6-70; M.C.S., Ord. No. 4439, § 2, 12-18-70; M.C.S., Ord. No. 4555, §§ 1—5, 5-13-71; M.C.S., Ord. No. 4744, §§ 1, 2, 12-8-71; M.C.S., Ord. No. 5085, § 1, 2-15-73; M.C.S., Ord. No. 5086, § 1, 2-15-73.)

Section 46-1.1. Permits valid in the central business district.

Permits designated by the following subsection of Section 46-1: Subsections (1), (10), (12), (19), (21), (24), through and including (36), are valid within that area of the Central Business District bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South. Vendors who have continuously operated the same business within that area under the authority of this chapter for eight (8) or more years prior to January 1, 1972 may obtain a valid permit to operate such business within that area. (M.C.S., Ord. No. 4744, § 3, 12-8-71; M.C.S., Ord. No. 4822, § 1, 4-13-72; M.C.S., Ord. No. 4957, § 1, 9-21-72; M.C.S., Ord. No. 5087, § 1, 2-15-73.)

APPENDIX B

Nancy DUKES, d/b/a Louisiana Concessions,
Plaintiff-Appellant,

versus

The CITY OF NEW ORLEANS and Honorable Moon Landrieu,
Defendants-Appellees.

No. 73-3979
Summary Calendar.*

United States Court of Appeals
Fifth Circuit.

Sept. 27, 1974.

* * * *

GOLDBERG, Circuit Judge:

Before January, 1972, plaintiff-appellant Nancy Dukes maintained a pushcart business in the Vieux Carre of New Orleans, selling hot dogs, drinks, confections and novelties. Subsequently the New Orleans City Council revised its ordinances, removing hot dog vendors from the list of specifically permitted pushcart enterprises in the Vieux Carre, but simultaneously allowing all licensed

*Rule 18, 5 Cir.; *see* Isbell Enterprises, Inc. v. Citizens Casualty Company of New York et al., 5 Cir. 1970, 431 F.2d 409, Part I.

vendors who had continuously operated the same such business in the Quarter for eight years prior to January 1, 1972, to continue selling.[1] Since Dukes' operation was only a year old, the effect of this revision was to eliminate her from the Vieux Carre market. The other pushcart hot dog vendor in the Quarter, eight year veteran Lucky Dogs, Inc., was thus left with an apparently unchallengeable monopoly.

Dukes brought this action under 28 U.S.C. §§ 2201 & 2202 against the City of New Orleans and its Mayor challenging the application of the revised ordinance's "grandfather clause" to hot dog sellers in the Vieux Carre as a denial of Equal Protection and praying for an injunction and declaratory judgment.[2] Both Dukes and the City

1 New Orleans, La., Ordinance 4822, Apr. 13, 1972, amending Ordinance 828 M.C.S. ch. 46. *See also* Ordinance 4957, Sept. 21, 1972, amending Ordinance 828 M.C.S. ch. 46.

2 Dukes began this action against the predecessor version of the New Orleans ordinance regulating peddling on the public streets and sidewalks of the Vieux Carre, New Orleans, La., Ordinances 4744, May 13, 1971; 4555, May 13, 1971; 4439, Dec. 18, 1970, all amending Ordinance 828 M.C.S. ch. 46. That version prohibited most pushcart sales, but excepted from prohibition the vending of certain items including hot dogs. Dukes' other sales items, drinks, confections and novelties were not specifically excepted under the ordinance, however. After the arrest of one of her employees on charges — later dismissed — of violating the existing ordinance, Dukes initiated this suit challenging the ordinance's discrimination between "similar and comparable businesses" as a denial of Equal Protection. After the revision of the ordinance in 1972, she amended her pleadings to attack the "grandfather clause."

Since the current ordinance permits no pushcart foodstuff vendors in the Quarter, *qua* foodstuff vendors, Dukes appears no longer seriously to press her original attack on discriminations between vendors of different types of goods. In any case, we have no difficulty in concluding that such an Equal Protection claim on Dukes' part could not withstand analysis. *See* McGowan v. Maryland, 1961, 366 U.S. 420-426, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393-399.

moved for summary judgment on the merits of the Constitutional claim. The district court, ruling on the basis of the pleadings, answers to the plaintiff's interrogatories, and uncontested affidavits, found no genuine issue of material fact and entered judgment for the City as a matter of law.

We conclude that the court below erred in its application of Equal Protection principles, and thus reverse. New Orleans retains ancestral entitlement to regulate business so as to maintain the charms of the Vieux Carre. But the Equal Protection Clause of the Constitution reaches beyond Canal Street, and lays its heavy hand when unjustified discrimination scars the Quarter's complexion. The City's purpose in revising its ordinance, fair though it be, cannot support its favoring a venerable hot dog dealer with the skins of eight seasons over franks of a more recent vintage.

I

There is no question of the City Council's legitimate authority generally to regulate business conducted on the public streets and sidewalks of the Vieux Carre in order to preserve the appearance and custom valued by the Quarter's residents and attractive to tourists. The sole dispute is whether the Council has exceeded Constitutional bounds in its discriminations regarding which enterprises are to be permitted and which are to be prohibited.

The Council's classifications are not drawn upon inherently suspect lines such as race or religion. Nor is the personal interest Dukes seeks to protect here one of such

Constitutional fundamentality as to give rise to a necessity for strict judicial scrutiny in preserving its equal protection. *See, e. g.*, Harper v. Virginia State Bd. of Elections, 1966, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (voting); NAACP v. Button, 1963, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (association); NAACP v. Alabama, 1958, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (access to courts). Rather here

> [we] deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be "reasonable, not arbitrary" . . . and bears "a rational relationship to a [permissible] state objective."

Village of Belle Terre v. Boraas, 1974, ___ U.S. ___, 94 S.Ct. 1536, 39 L.Ed.2d 797. Under this test the deference to legislative judgment is strong. *See, e. g.*, San Antonio School District v. Rodriguez, 1973, 411 U.S. 1, 17, 40, 93 S.Ct. 1278, 1288, 1300, 36 L.Ed.2d 16, 33, 47; McGowan v. Maryland, 1961, 366 U.S. 420, 425, 81 S.Ct. 1101, 1104, 6 L.Ed.2d 393, 399; Williamson v. Lee Optical, 1955, 348 U.S. 483, 488-489, 75 S.Ct. 461, 464-465, 99 L.Ed. 563, 572-573; Railway Express Agency v. New York, 1949, 336 U.S. 106, 109-110, 69 S.Ct. 463, 465, 93 L.Ed. 533, 538-539. As the Supreme Court restated in Morey v. Doud, 1957, 354 U.S. 457, 463-464, 77 S.Ct. 1344, 1348-1349, 1 L.Ed.2d 1485, 1490, our chief guide in resolving this case,

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of

discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." Lindsley v. Natural Carbonic Gas Co., [1911,] 220 U.S. 61, 78, 79, 31 S.Ct. 337, 340, 341, 55 L.Ed. 369, 377 . . .

Thus, we view the New Orleans ordinance initially from a traditionally sympathetic perspective. This does not mean, however, that the judicial role of constitutional oversight is to be abdicated. Morey v. Doud also teaches that where the discriminations to be assessed assume an "unusual character," we must exercise "careful consideration to determine whether they are obnoxious" to the Equal Protection Clause. 354 U.S. at 464, 77 S.Ct. at 1349, 1 L.Ed.2d at 1490-1491 (quoting Hartford Steam Boiler Inspec. & Ins. Co. v. Harrison, 1937, 301 U.S. 459, 462, 57 S.Ct. 838, 840, 81 L.Ed. 1223, 1226; Louisville Gas & Elec. Co. v. Coleman, 1928, 277 U.S. 32, 37, 48 S.Ct. 423, 425, 72 L.Ed. 770, 774). Finding the "grandfather clause" of the New Orleans ordinance here at issue to be facially "unusual" in its establishment of a closed class of favored

enterprises distinguished solely by the length of their tenure as established operations, we proceed to such a "careful consideration."

II

In our examination of the nature of the discrimination attacked here, we are guided by two principles consistently reiterated by the Supreme Court. First, "distinctions in the treatment of business entities engaged in the same business activity may be justified by genuinely different characteristics of the business involved. . . . But distinctions cannot be so justified if the 'discrimination has no reasonable relation to these differences.' Hartford S.B.I. Ins. Co. v. Harrison, [1937,] 301 U.S. 459, 463, [57 S.Ct. 838, 840] 81 L.Ed. 1223, 1226." Morey v. Doud, 354 U.S. at 466, 77 S.Ct. at 1350, 1 L.Ed.2d at 1492. Second, "[a] classification . . . 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' Royster Guano Co. v. Virginia, [1920,] 253 U.S. 412, 415, [40 S.Ct. 560, 561] 64 L.Ed. 989, 990." Reed v. Reed, 1971, 404 U.S. 71, 75-76, 92 S.Ct. 251, 254, 30 L.Ed.2d 225, 229.

A classification based on tenure may have a legitimate governmental rationale and thus be constitutionally permissible. A zoning ordinance, for example, may be made applicable only to future builders in order to conserve reliance interests. *See* Sampere v. New Orleans, 1928, 166 La. 776, 117 So. 827, aff'd per curiam, 1929, 279 U.S. 812, 49 S.Ct. 262, 73 L.Ed. 971. *Cf.* United States v. Maryland Savings-Share Ins. Corp., 1970, 400 U.S. 4, 91 S.Ct. 16, 27 L.Ed.2d 4. Even a discrimination between established

operations based on distinctions in tenure may be proper if rationally connected to a valid legislative purpose. Thus in Watson v. Maryland, 1910, 218 U.S. 173, 30 S.Ct. 644, 54 L.Ed. 987, the Supreme Court upheld a Maryland statute exempting physicians who had practiced in the state for four years from taking a licensing examination, upon the reasonable legislative "theory that those who have acceptably followed the profession in the community for a period of years may be assured to have the qualifications which others are required to manifest as a result of an examination." 218 U.S. at 177, 30 S.Ct. at 646, 54 L.Ed. at 989. *See also* Dent v. West Virginia, 1889, 129 U.S. 114, 9 S.Ct. 231, 32 L.Ed. 623. *Cf.* Eslin v. Collins, Fla.1959, 108 So.2d 889.

The New Orleans ordinance challenged here was enacted as part of a series of measures limiting peddling in the Vieux Carre in accordance with the New Orleans City Council's apparent and reasonable belief that the presence of such distractions inhibits tourism. The Council's asserted purpose in permitting only those vendors who had sustained their operations in the Quarter for eight years to remain was to preserve those least likely to disturb "the unique charm and beauty that is characteristic of the Vieux Carre."[3] While we are sympathetic to New Orleans' efforts to conserve the traditional complexion of the Vieux Carre and sensitive to the difficulty of consistently aligning tradition with purely reasonable distinctions,[4] we nevertheless find the Council's rationale insufficient to support the discrimination imposed.

3 Brief of Appellee at 7.

4 *Cf.* McGowan v. Maryland, 1961, 366 U.S. 420, 426, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393, 399; Kotch v. River Port Pilot Comm'rs, 1947, 330 U.S. 552, 67 S.Ct. 910, 91 L.Ed. 1093.

The pivotal defect here is akin to that exposed by the Supreme Court in Morey v. Doud, *supra*. Under the Illinois statute invalidated there, the American Express Company was exempted from regulatory and licensing requirements imposed on other issuers of money orders in the state, apparently in recognition of its stability and preeminence. The Supreme Court held this rationale insufficient, however, because American Express would "continue to be unregulated whether or not [it] retains its present characteristics." 354 U.S. at 467, 77 S.Ct. at 1351, 1 L.Ed.2d at 1492. Here similarly, the hypothesis that a present eight year veteran of the pushcart hot dog market in the Vieux Carre will continue to operate in a manner more consistent with the traditions of the Quarter than would any other operator is without foundation.[5] There is simply no suggestion that eight years' experience in the pushcart hot dog business in the Vieux Carre is necessary or helpful to better hot dog salesmanship, or that it instills in the licensed vendors (or their likely transient operators) the kind of appreciation for the conservation of the Quarter's tradition that would move them to refine their methods of operation.[6]

5 The line of analysis we adopt here is not at odds with the principle that in assessing economic legislation under challenge as a denial of Equal Protection, we should assume any reasonable set of facts on which the legislature might have based its judgment. That principle applies only to the assumption of facts in existence at the time of enactment. *See* Lindsley v. Natural Carbonic Gas Co., 1911, 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369, 377, quoted in Morey v. Doud, 354 U.S. at 464, 77 S.Ct. at 1349, 1 L.Ed.2d at 1490.

6 Nor does the challenged ordinance require the eight year veterans permitted to remain in the Vieux Carre to maintain the current appearance or location of their equipment or operations, or their habitual ways of doing business.

Furthermore, the New Orleans ordinance selects a single vendor for special perference,[7] closing the Vieux Carre pushcart foodstuff market to all other operators regardless of how well established or desirable their operations may be or might otherwise become. This factor distinguishes the present matter from Stanley v. Public Util. Comm'n, 1935, 295 U.S. 76, 55 S.Ct. 628, 79 L.Ed. 1311, in which the Supreme Court upheld legislation somewhat similar to that challenged here, but which operated only to limit entry into the regulated field to qualifying applicants, not to bar future entry altogether. There, a 1933 Maine statute required common carriers operating motor vehicles for hire to obtain a certificate of public convenience and necessity, but also provided that such certification was to be granted "as a matter of right" to carriers in continuous operation since March 1, 1932. The Supreme Court's opinion went no further than to sanction such a limited qualification on free entry into the market, holding that in the exercise of its legitimate regulatory powers, "the legislature could determine, within reason, as of what period the service of carriers for hire over its highways did not impair their use or cause congestion, and [could] require certificates for those seeking to supply additional transportation for a later period." 295 U.S. at 78, 55 S.Ct. at 628, 79 L.Ed. at 1313. *Cf.* Watson v. Maryland, 1910, 218 U.S. 173, 30 S.Ct. 644, 54 L.Ed. 987.

7 Unlike the statute invalidated in Morey v. Doud, the New Orleans ordinance does not specify th one enterprise given legislative favor, Lucky Dogs, Inc., by name; here the statutory exemption is ostensibly generic. The functional effect of the specific statutory exemption is identical to that encountered in Morey v. Doud, however; it is a matter of public licensing record that Lucky Dogs, Inc., is the only hot dog vendor qualifying under the "grandfather clause" to operate in the Vieux Carre. We see no legal significance in the different manner of describing the single favored entity. *See* Cotting v. Godard, 1901, 183 U.S. 79, 114-115, 22 S.Ct. 30, 44, 46 L.Ed. 92, 109-110, cited with approval in Morey v. Doud, 354 U.S. at 467, 77 S.Ct. at 1351, 1 L.Ed.2d at 1492-1493.

The exclusionary character of the New Orleans ordinance more closely resembles the provisions of the Illinois statute held invalid in Morey v. Doud, *supra*, which imposed economic and organizational burdens,[8] above and beyond the requirement of demonstrating public convenience, on competitors of American Express while exempting American Express alone. Of course it is true that not every statute treating uniquely some individual enterprise[9] or some closed class of enterprises[10] is constitutionally objectionable. Nevertheless, the creation of a protected monopoly for the favored class member is a significant factor to be considered in assessing the nature of the discrimination here. Like Morey v. Doud, "[t]his is not a case in which the Fourteenth Amendment is being invoked to protect a business from the general hazards of competition. The hazards here have their roots in the statutory discrimination." 354 U.S. at 468-469, 77 S.Ct. at 1352, 1 L.Ed.2d at 1493.

We conclude that appellant Dukes has overcome the presumption of constitutionality of the New Orleans ordinance's "grandfather clause" by demonstrating the in-

8 These included preclusion from selling through retail establishments and the imposition of licensing surety and insurance costs.

9 *See, e. g.*, Erb v. Morasch, 1900, 177 U.S. 584, 20 S.Ct. 819, 44 L.Ed. 897 (statute exempting named rail line from compliance with limit on train speed in city).

10 In United States v. Maryland Savings-Share Ins. Corp., 1970, 400 U.S. 4, 91 S.Ct. 16, 27 L.Ed.2d 4, for example, the Supreme Court upheld a 1960 federal statute granting tax exemption to existing non-profit corporations engaged in the insurance of savings and loan associations against the equal protection attack of a like corporation chartered in 1962 and denied the exemption. The Court was at some pains to point out, however, that a legitimate and rationally related governmental interest in not extending the exemption had been "affirmatively" demonstrated. *Id.* at 6, 7 n. 2, 91 S.Ct. at 17, 18, 27 L.Ed.2d at 7, 7 n. 2.

substantiality of the relation between the nature of the discrimination and the legitimate governmental interest in conserving the traditional assets of the Vieux Carre. We need not determine which aspects of the legislative monopoly created here might hypothetically be adjusted to render the ordinance constitutionally inoffensive.[11] It is enough that the sum of the constitutional considerations examined outweighs the legislative presumption, so that we are not driven to balance each individual factor. "Taking all of [the] factors in conjunction — the remote relationship of the statutory classification to the [ordinance's] purpose or to business characteristics, and the creation of a closed class . . . — we hold that the application of the [ordinance] to [appellant] deprives [her] of equal protection of the laws." Morey v. Doud, *supra*, 354 U.S. at 468-469, 77 S.Ct. at 1352, 1 L.Ed.2d at 1493.

We emphasize that our holding does not bar New Orleans from further legitimate attempts to conserve the Vieux Carre's unique resources. The City Fathers might constitutionally enact any of a broad range of measures — for example, strict regulation of the location and appearance of pushcarts — in order to satisfy the same concerns that prompted the ordinance here examined. But such a "grandfather clause" as was enacted could be viable only if paternally genuine; a classificatory statute can withstand constitutional attack only if its classificatory directions are rationally guided. Here the strictly chronological divisions were not. We hold only that the City may not satisfy its proper goals through such arbitrary discriminations.

---

11 We likewise specifically decline to consider the constitutionality of the "grandfather clause" as it applies to other categories of enterprise in the Vieux Carre.

Finding the ordinance unconstitutional as applied, we reverse the summary judgment for the City entered below. Since the trial court did not find the ordinance's discrimination unconstitutional, it did not consider whether the "grandfather clause" was severable from the ordinance's simultaneous general preclusion of pushcart hot dog vendors from the Quarter, that is, whether the ordinance should be read as a total nullity, or whether it should be read to preclude the operation of all pushcart hot dog dealers in the Vieux Carre. We remand for the district court to resolve this question and enter judgment accordingly.

Reversed and remanded for further proceedings consistent with this opinion.

APPENDIX C

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NANCY DUKES, d/b/a Louisiana Concessions
Plaintiff

versus No. 73-3979

THE CITY OF NEW ORLEANS and HONORABLE MOON LANDRIEU
Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the City of New Orleans and the Honorable Moon Landrieu, the defendants above named, hereby appeal to the Supreme Court of the United States from the judgment reversing the United States District Court, Eastern District of Louisiana, New Orleans Division, entered in this action on September 27th, 1974.

This appeal is taken pursuant to 28 U.S.C. §1254(2).

/s/ JOEL P. LOEFFELHOLZ
JOEL P. LOEFFELHOLZ
ASSISTANT CITY ATTORNEY
ATTORNEY FOR THE CITY
OF NEW ORLEANS AND THE
HONORABLE MOON LANDRIEU
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822-7145

BLAKE G. ARATA
CITY ATTORNEY

APPENDIX — VOLUME I

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-775

THE CITY OF NEW ORLEANS AND
HONORABLE MOON LANDRIEU,
Appellants,

versus

NANCY DUKES, d/b/a LOUISIANA CONCESSIONS,
Appellee.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JURISDICTIONAL STATEMENT DOCKETED DEC. 21, 1974
JURISDICTION POSTPONED APRIL 14, 1975

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DOCKET ENTRIES

In the United States District Court for the
Eastern District of Louisiana, New Orleans Division

NANCY DUKES d/b/a LOUISIANA CONCESSIONS

versus No. CA-72-2042

THE CITY OF NEW ORLEANS and
THE HONORABLE MOON LANDRIEU

DATE	PROCEEDINGS
8/ 1/72	**Complaint; 2 summs issd.**
8/ 1/72	Pltf's motion for preliminary injunction; ORDERED that the defts. show cause on 8/16/72 at 10 A.M. why Ordinance No. 4744 amending Chapter 46 or Ord. 828, M.C.S., known as the Code of the City of N.O., should not be enjoined and a preliminary injunction issued; (RBW) Ent. 8/1/72 (Issd. to U.S. Marshal)
8/10/72	M.R. on summs. served Hon. Moon Landrieu and The City of N.O., both thru Helen Lorio on 8/7/72
8/14/72	Pltf's mtn. and ORDER continuing the hearing on a preliminary injunction from 8/16/72 to 8/30/72 at 2 P.M. (JMG) 8/12/72. Ent. 8/15/72.
8/30/72	Pltf's Mtn & ORDER (JMG) Continuing the hrg. on the motion for prel. inj. from 8-30-72 to 10-4-72 at 10:AM. Ent. 8-30-72

10/ 3/72	Pltf's 1st supplemental and amending petition
10/ 4/72	Hrg. on mtn. of pltfs. for a preliminary injunction; counsel not present; matter cont'd by the Ct. to be reset. (JMG) Ent. 10/4/72
10/13/72	M.E.; Status conf. held 10/11/72; ORDERED that defts. file an answer to pltf's complaint & amended complaint no later than 10/24/72; that discovery be completed by 11/24/72, etc. (JMG) 10/11/72. Ent. 10/13/72
10/25/72	ANSWER by City of N.O. and Hon. Moon Landrieu
10/25/72	ANSWER to pltf's supplemental & amending complaint by City of N.O. and Hon. Moon Landrieu
10/31/72	Pltf's interrogs. propounded to defts.
12/ 8/72	Motion of pltf. to compel answers to interrogs. & attorney fees; Notice of hrg. on 1/10/73 at 10 A.M.; Memo
1/10/73	Hrg. on mtn of pltf. to compel ans. to interrogs & atty. fees; matter cont'd to 1/24/73 at 10 A.M. (JMG) Ent. 1/12/73
1/24/73	Defts' ans. to pltf's interrogs.
1/24/73	Hearing on mtn. of pltf. to compel ans. to interrogs. & atty. fees; argument; DENIED. (JMG) Ent. 1/26/73
2/26/73	M.E. & ORDER that a status conf. is set for 4/19/73 at 2 P.M. (JMG) Ent. 2/26/73
4/20/73	M.E.; Status conf. held 4/19/73; ORDERED that the parties file a set of stipulated facts & the corresponding mtns. for summ. judg. by 6/18/73. (JMG) 4/19/73 Ent. 4/20/73
6/15/73	Pltf's mnt. & ORDER that Geo. M. Strickler, Jr. be entered as co-counsel for pltf. (JMG) 6/18/73. Ent. 6/18/73

8/16/73	Issg. Notice for a call docket set for 9-5-73 @ 10:AM.
9/ 5/73	Case called & passed
9/10/73	Mtn. & ORDER that Okla Jones, Esq. be entered as co-counsel for pltf. (JMG) Ent. 9/11/73
9/10/73	Pltf's mtn. for summ. judg.; Hearing 9/19/73 at 10 A.M.; Statement; Memo; Affidavits
9/19/73	Hrg. on mtn. of pltf. for summ. judg; matter cont'd. to 10/3/73 at 10 A.M. (JMG) Ent. 9/20/73
9/24/73	Defts. City of N.O. & M. Landrieu's mtn. for summ. judg; Statement; Memo; Hrg. 10/3/73 at 10 A.M.
10/ 3/73	Hrg. on mtn. of pltf. for summ. judg - DENIED; hrg. on mtn. of defts. for summ. judg. - GRANTED (JMG) Ent. 10/4/73
10/ 9/73	JUDGMENT in favor of defts., The City of N.O., Hon. Moon Landrieu, and against pltf., Nancy Dukes, d/b/a Louisiana Concessions, dismissing said pltf's suit, with costs. (CLERK) Ent. 10/10/73
10/29/73	NOTICE OF APPEAL by pltf.
10/29/73	Bond for costs in the sum of $250.00
10/30/73	Mtn. & ORDER that Joseph Neves Marcal III, Esq. be recognized as counsel of record - on appeal. (JMG) Ent. 10/31/73
12/ 4/73	Record forwarded to Court of Appeals this date
10/22/74	JUDGMENT (c.c.) of Court of Appeals & ORDER that the judgment of the District Court is reversed and this cause is remanded to said Court; that defts-appellees pay to

pltf-appellant, the costs on appeal, etc.; Opinion; Issd. as Mandate: 10/21/74. (Record to be returned later.)

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[1] COMPLAINT

Filed: Aug. 1, 1972

In the United States District Court for the
Eastern District of Louisiana, New Orleans Division

NANCY DUKES d/b/a LOUISIANA CONCESSIONS

versus No. 72-2042

THE CITY OF NEW ORLEANS and
THE HONORABLE MOON LANDRIEU

I. JURISDICTION

1. This action is brought pursuant to 42 U.S.C. Sections 1983 and 1985 to redress the deprivation of plaintiffs rights secured by the 14th Amendment to the United States Constitution.

2. Pursuant to 28 U.S.C. Sections 2201-2202, a declaratory judgment is sought declaring section 46-1 of the City Code as amended by Ordinance No. 4744 Unconstitutional as applied to the plaintiff.

3. The jurisdiction of the court is under 28 U.S.C. Section 1331, and 1343(3)(4).

II. PARTIES

4. Plaintiff, Nancy Dukes d/b/a Louisiana Concessions is a citizen of the United States and the State of Louisiana. She is a resident of the City of New Orleans, Louisiana, residing at 8240 Apricot Street in the Parish of Orleans.

5. The Defendant is the City of New Orleans in the State of Louisiana.

6. The Honorable Moon Landrieu, Mayor for the City of New Orleans in his official and individual capacity, City Hall, New Orleans, Louisiana.

III. STATEMENT OF FACTS

7. Plaintiff is the sole proprietor of Louisiana Concessions, a business venture involved in the selling of food, drinks, confections and novelties from movable push carts on the public streets and sidewalks and in/on public and private places. Plaintiff's sales, particularly in the summer months (May, June, July, August, September) consists almost entirely of those sales occurring in the Vieux Carré. Plaintiff's average weekly sales total three hundred and eighty five dollars ($385.00).

8. On September 23, 1971 Councilmen DiRosa of the New Orleans City Council, introduced an ordinance to amend Chapter 46 of Ordinance 828, M.C.S. known as the Code of the City of New Orleans. On January 1, 1972 Ordinance No. 4744, amending Chapter 46, Section 1, went into effect. Prior to the aforesaid amendment there were no restrictions, with a proper permit, as to the type of items sold in the Vieux Carré.

Under the amendment, only the following businesses were allowed to operate on the public streets and sidewalks of the Vieux Carre.

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets or public places other than during the Mardi Gras season.

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square.

(12) To sell tickets to supper to be held in private homes.

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignes, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Section 51:31 to 51:41 of the Revised Statutes of Louisiana.

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted.

(24) To conduct sport events when admission is charged or a fee collected in any

manner and when an annual license is not paid to the city.

(25) For amateur and professional prize-fights or boxing and wrestling contests.

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals, bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected.

(27) For Carnival Balls.

(28) For philharmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner.

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged.

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted.

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner.

(32) For dancing when admission is charged.

(33) For a private dance in a public hall.

(34) To give a rummage sale.

(35) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof.

(36) To sell flowers on the city sidewalks or streets.

(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or unnatural sex acts or otherwise appeal to sexually prurient interest and which establishments cater exclusively to adults.

* (See Appendix A for Chapter 46 of the City Code as amended).
* (See Appendix B for Chapter 46 of the City Codes prior to the January 1972 Amendment).

9. On, or about, January 17, 1972, plaintiff's agent and manager, Frank D. Silliker of 346 Harding Street, New Orleans, Louisiana, conducting plaintiff's business in the Vieux Carre, was arrested for a violation of Chapter 46, Ordinance No. 4744 of the City Code.

10. Although this charge was subsequently dismissed, it produced a "chilling effect" upon plaintiff, thus it is not possible for plaintiff to continue in his business in the Vieux Carre without further fear of harrassment and prosecution.

IV. CAUSE OF ACTION

11. Plaintiff avers that the said Ordinance is arbitrary, unreasonable, unconstitutional and discriminatory on its face in that it allows other, similar and comparable, business' to operate in the Vieux Carre, while denying plaintiff due process and equal protection of the law. It also alleges that Ordinance No. 4744 does not further any legitimate goals of the State, and therefore the State does not have a "compelling state interest" in the enforcement of said Ordinance. Thus the Ordinance manifestly violates the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

V. COLOR OF LAW

12. The passage of said Ordinance, by the New Orleans City Counsel and the Mayor of New Orleans, acting separately or jointly, under color of state law, subjects the plaintiff, Nancy Dukes, a citizen of the United States, to the deprivation of her rights secured by the Constitution of the United States.

VI. EQUITY

13. The passage of Ordinance No. 4744 on January 1, 1972 by the New Orleans City Counsel caused irreparable damage, harm, loss and injury to plaintiff.

14. The exclusion of Louisiana Concessions from the Vieux Carre produced a destructive, harrassing and intimidating effect upon said plaintiff.

15. Due to the passage of Ordinance No, 4744 plaintiff has, within the period of January 1, 1972 to the filing date of this suit, lost income in the sum of ten-thousand dollars ($10,000) plus legal interest and continues to lose three-hundred and eighty-five dollars ($385.00) per week.

16. It is therefore necessary that this Court permanently restrain and enjoin defendants, or their agents, from enforcing the aforesaid statute, and to declare said statute unconstitutional as applied to plaintiff and on its face.

VII. PRAYER

WHEREFORE, plaintiff respectfully prays:

a) That this court declare Ordinance No. 4744, amending Chapter 46 of the Code of the City of New Orleans unconstitutional as applied to plaintiff and on its face on the grounds that it violates the due process and equal protection clauses of the United States Constitution.

b) That this court grant preliminary and permanent injunctions enjoining and restraining defendants

or their agents from enforcing Ordinance No. 4744 against the plaintiff.

c) That this court render judgment in favor of plaintiff for the sum of ten thousand dollars ($10,000) plus legal interest, and further to grant plaintiff the sum of three-hundred and eighty-five dollars ($385.00) per week from the filing date until Ordinance No. 4744 is declared invalid.

d) That this court grant the plaintiff his costs, attorneys fees and such other relief as the court may deem fit and proper.

e) That this court grant the plaintiff all general, declaratory, and equitable relief necessary.

/s/ WILLIAM E. RITTENBERG

WILLIAM E. RITTENBERG
American Civil Liberties Union
of La.
Attorney for Plaintiff
606 Common Street
New Orleans, Louisiana 70130
522-0617

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority personally came and appeared Mrs. NANCY DUKES d/b/a Louisiana Concessions, who after being duly sworn did declare under oath, that she is the plaintiff in the foregoing petition, that she has read all of the allegations contained therein, and that all the allegations are true and correct; that if a preliminary and permanent injunction does not issue herein as prayed for that plaintiff, Mrs. NANCY DUKES d/b/a Louisiana Concessions will suffer irreparable damage, harm, loss and injury.

/s/ MRS. NANCY DUKES
MRS. NANCY DUKES

SWORN TO AND SUBSCRIBED
before me this 1st day of
August, 1972.
/s/ WILLIAM E. RITTENBERG
NOTARY PUBLIC

[2] MOTION FOR PRELIMINARY INJUNCTION

(Number and Title Omitted)

Filed: Aug. 1, 1972

Plaintiff's move this Court to grant a preliminary injunction prohibiting defendants and their agents until such time as this Court has had an opportunity to render judgment on the merits of the complaint herein:

1) From prosecuting plaintiff, or her agents, for violation of New Orleans, Louisiana, City Code Chapter 46, Section 46-1.1 otherwise known as Ordinance No. 4744.

2) From any further or future enforcement of said Ordinance against plaintiff or her agents.

/s/ WILLIAM E. RITTENBERG
William E. Rittenberg
American Civil Liberties
Union of La.
Attorney for Plaintiff
606 Common Street
New Orleans, Louisiana 70130
522-0617

ORDER

IT IS HEREBY ORDERED, that the defendants in this matter show cause on the 16th day of August, 1972 at 10:00 AM. o'clock why Ordinance No. 4744 amending Chapter 46 of Ordinance 828, M.C.S., known as the Code of the City of New Orleans, should not be enjoined and a preliminary injunction issued or prayed.

/s/ R. BLAKE WEST
DISTRICT JUDGE

MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION

(Number and Title Omitted)

MAY IT PLEASE THE COURT:

INTRODUCTION

Prior to the amendment of Section 46-1, of Chapter 46 of the City Code of New Orleans the following edibles were permitted to be sold in the Vieux Carré other than during the Mardi Gras season:

(3) To sell candies, nuts and confections on foot or from push carts or from other vehicles on city streets or public places.

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places.

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets or public places.

(6) To peddle cooked food, cakes, pies, etc.

(7) To sell fruits and vegetables on foot or from push carts on city street or public places.

* (See Appendix A for Chapter 46 of the City Code as amended).
* (See Appendix B for Chapter 46 of the City Codes prior to the January 1972 Amendment.)

After January 1, 1972 when Amendment 46-1.1 took effect only Section five (5) hot tamales and/or hot dogs sold on foot or from push carts were permitted to be sold in the Vieux Carre.

Since the plaintiff sold candy, nuts, confections and novelties she was effectively excluded from selling these items in the Vieux Carre under the new amendment. Plaintiff depends on her Vieux Carre sales for most of her income in the summer months. Therefore, plaintiffs prohibition from the Vieux Carre is causing her irreparable harm and damage due to loss of income.

THE STATE, AND ITS SUBDIVISIONS HAVE A RIGHT TO REGULATE BUT THE CLASSIFICATIONS MUST BE REASONABLE AND NON-DISCRIMINATORY.

There is no doubt that the city has the authority to regulate peddling on the streets and to compel

peddlers and hawkers while peddling their wares to keep within bounds. *City of New Orleans v. Fargot* 116 Louisiana 369, 40 So. 735 (1906). However, the right of the state or any of its subdivisions, to make classifications of peddlers, for the purpose of regulations, is limited by the restriction that a particular classification must be reasonable and that there shall be no discrimination between members of the same class.

The Courts of Louisiana have repeatedly expressed the view that "due process of the law and the equal protection of the law are had when the laws affect alike all persons similarly situated". *City of Lake Charles v. Wallace* 247 Louisiana 285, 170 So2nd 654 (1964); *Scott v. City of West Monroe*, 95 So2nd 343. District Judge Heebe in *Heynann v. State of Louisiana* 269 F. Supp. 36 (1967) aptly stated that "if all citizens receive in the same circumstances the same treatment, then no citizen is denied his right to the equal protection of the laws, although all citizens might be receiving unfair treatment."

The fact that a legislative body may not discriminate among persons following the same occupation or business is too well known to require the citation of authority. *Frecker v. City of Dayton*, 153 Ohio State 14, 90 NE2d 851 (1950) "So long as the law applies to all alike the requirements of equal protection are met." *State of Louisiana v. Resweber* 67 S.Ct. 374, 329 US 459 (1947).

SAID ORDINANCE, TO BE CONSTITUTIONAL, MUST BE BASED ON A FUNDAMENTAL DISTINCTION, REAL AND NOT FEIGNED.

The function of this court is to determine whether the Ordinance operates equally upon all persons similarly situated. If it does than the discrimination is within permissible legislative limits. If it does not, then the differentiation would be without reasonable basis and the act does not meet the test of Constitutionality. *Slater v. Salt Lake City*, 206 P2d 153, (1949).

Plaintiff fails to see the distinction between his occupation, peddling candy, nuts, confections and novelties and that of the similar and comparable occupation of peddling "hot tamales and/or hot dogs". Both occupations are conducted from push carts, both deal in foodstuffs and both rely on a like clientele and similar wants.

In *Item Co., v. National Dyers and Cleaners* 130 So. 879 (1930) the Louisiana Court of Appeals stated that "it has always been our view that it is not all discriminations which are prohibited by the 14th Amendment, but only those which are unreasonable and which are not based on some fundamental difference justifying the distinction, . . ., and that a state may thus after acting within its police power, place requirements on one kind of business not placed on others, provided those requirements are not unreasonable and are based on some fundamental difference distinguishing the particular kind of business from other businesses."

Judge Rubin has said, "Equal protection only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made." *Cipriano v. City of Houma*, 286 F. Supp. 823 (1968), re-

versed on other grounds on appeal 89 S.Ct. 1897, 395 US 701.

The United States Supreme Court concurred in Judge Rubins view in their decision in *Williams v. State of Arkansas* 217 US 79 (1910). "When a state legislature has declared that in its opinion, policy requires a certain measure, its action should not be disturbed by the Court under the 14th Amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched."

Plaintiff reiterates that there is not a fundamental difference between the legislative distinctions, if any they are feigned not real. Therefore the Ordinance is unreasonable and therefore discriminatory.

SAID ORDINANCE, TO BE CONSTITUTIONAL, MUST NOT BE UNREASONABLE AND ARBITRARY.

Since the use of the streets for the pursuit of private business is not one of the privileges of citizenship, the sale of articles on the streets may be prohibited, yet unreasonable and arbitrary discrimination will render such regulations unconstitutional. While equal protection of the laws is not denied by the absolute prohibition of peddling, under certain conditions and within certain territories, laws which contain arbitrary exceptions or exemptions of persons within the classes to which they generally apply are considered invalid because they deny equal protection of the laws.

In *Standard Homestead Association v. Horrath*, 17 So2d 811 (1944) the Civil District Court for the Parish of Orleans declared that "a statute which is applicable to all persons in like circumstances and does not subject any individual to arbitrary exercise of power does not violate 'due process' or 'equal protection' clauses of state and federal constitution."

In the United States District Court, Fifth Circuit, in a suit attacking the constitutionality of a City Ordinance, Judge Christenberry declared that "a legislative classification will not be set aside by the courts unless the distinction bears no relationship to a legitimate good, and is pure arbitrary." *Heath v. City of New Orleans* 320 F.Supp. 545 (1970).

Plaintiff states that the distinction made by Ordinance No. 4744 is pure arbitrary, and bears no relationship to any legitimate good. Mere legislative assertion that an act was reasonably necessary and appropriate for the accomplishment of a legitimate objective within the states police power does not alone bring the act with the limits of proper exercise of that power.

Plaintiff alleges that Ordinance No. 4744 does not further any legitimate goals at the State, and therefore the State does not have a "compelling state interest" in the enforcement of said Ordinance.

DISCRIMINATION IS APPARENT ON THE FACE OF THE ORDINANCE AND THEREFORE IS UNCONSTITUTIONAL

Plaintiff again stresses that said Ordinance is not based on a fundamental difference, that it is arbitrary and that discrimination is apparent on its face.

A City Ordinance prohibiting the sale in parks and on streets, sidewalks, and soft drinks, candy, sandwiches, peanuts and similar confections was held invalid as a prohibition of the prosecution of a lawful business, in *Frecker v. Dayton* 153 Ohio St. 14, 90 SE2d 851, 14 ALR3d 896. In affirming the lower court, the court said that a legislative body could not discriminate among persons following the same occupation or business and that discrimination was apparent on the face of the Ordinance and evidence showed that there was discrimination between dealers in comparable merchandise and many other street peddlers, hawkers, and hucksters who were licensed to use the streets of the city for the sale of their merchandise.

Ordinance No. 4744 is similar to the City Ordinance prohibited in *Frecker*. Said Ordinance discriminates between peddlers of candy, nuts, confections and novelties and those of hot tamales and/or hot dogs, thus, it clearly discriminates, on its face, among persons following the same occupation or business.

CONCLUSION

Ordinance No. 4744, amending Chapter 46 of the City Code of New Orleans, is unconstitutional and thereby violates the due process and equal protection clause of the United States Constitution.

RESPECTFULLY SUBMITTED,

/s/ WILLIAM E. RITTENBERG

William E. Rittenberg
American Civil
Liberties Union of La.
Attorney for Plaintiff
606 Common Street
New Orleans, Louisiana 70130
522-0617

Dated: July 31, 1972

APPENDIX A

CHAPTER 46

PERMITS[1]

Section 46-1. Permits required for various callings or occasions; schedule of fees therefor.[2]

Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to

---

1 For charter provisions with respect to permits, including a definition of "permit" as there used, see Char., §§4-701 and 4-702. For provisions requiring a permit for engaging in various occupations or undertakings dealt with in the other chapters hereof see those chapters.

2 For licenses on other coin operated machines, see Chapter 16, Coin Operated Machines.

and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however, are not valid in the Vieux Carre except as provided in Section 46-1.1 of this Chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:

(1) To sell the following items on city streets during Mardi Gras season beginning January 6 thru Mardi Gras Day:

(A) For a fixed location:

(a) (1) To sell novelties ..... $ 50.00
(2) To sell candies, nuts and confections 50.00
(3) To sell sandwiches and soft drinks 50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras season. This deposit will be forfeited thirty (30) days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accor-

dance with Chapter 56 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, property or rights-of-way may set up their vehicles or stands during parade time only. Parade time shall be defined as that time commencing two (2) hours before the start of a parade and ending two (2) hours after the passing of the parade. This provision will not apply when there is more than one parade on any Calendar Day in which case vendor must move two (2) hours after the end of the last parade for that Calendar Day.

(e) Where the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the city shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with

all provisions of Chapter 38 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width.

(h) All vendors selling from fixed locations shall have the mayoralty permit as provided for in this section publicly displayed by the permittee at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras permits for vendors from fixed locations whether on private or public property shall be issued for the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. to the river side of Dauphine St.

(B) For moving locations:

(a) (1) To sell novelties .....$ 25.00
(2) To sell candies, nuts and confections 25.00
(3) To sell sandwiches and soft drinks 25.00

(c) The Department of Finance shall provide moving vendors at their cost with a Mardi Gras Mayoralty Badge which must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this chapter. A permittee shall be required to issue a Mardi Gras Mayoralty Badge to each of his agents or employees and failure to do so shall constitute a violation of this Chapter by the permittee.

(d) No Mardi Gras moving vendors shall be permitted in the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. and to the river side of Dauphine St.

(2) To sell novelties on the city streets other than during the Mardi Gras season.

Per sales outlet, for one year ....$ 25.00

(3) To sell candies, nuts and confections on foot or from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.

Per sales outlet, per year .....$ 25.00

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.

Per sales outlet, per year .....$ 25.00

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets or public places other than during the Mardi Gras season.

Per sales outlet, per year .....$ 25.00

(6) To peddle cooked food, cakes, pies, etc., other than during the Mardi Gras season.

Per sales outlet, per year .....$ 50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places.

Per sales outlet, per year .....$ 25.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles.

Per vehicle, per year .....$ 50.00

(9) To sell home-manufactured articles or home-grown products on foot.

Per year .....$ 25.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square.

Per year .....$ 40.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc., on city streets or public places.

Per year .....$ 15.00

(12) To sell tickets to supper to be held in private homes.

Per event .....$ 15.00

(13) Demonstrations of food products or devices in public places or markets, etc.

Per engagement .....$ 25.00

(14) To distribute samples, canvass on city streets or from house to house.

(a) For crew manager, per year .....$ 25.00
(b) For each crew member, per year.. 15.00

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property.

(a) Per year $100.00
(b) Per month 15.00

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed.

Per year .....$ 25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph.

Per year $250.00

(18) To operate a hand organ in the city streets.

Per year ..... $ 15.00

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Section 51:31 to 51:41 of the Revised Statutes of Louisiana.

Per sale ..... $ 25.00

(20) Weighing devices, etc. on sidewalks or in public places.

Per nickel machine, per year .... $ 25.00
Per penny machine, per year 15.00

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted.

Per month ..... $ 25.00

(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis.

Per year in addition to license ... $100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.

Per year $100.00

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:

(a) Admission not more than 75¢ per event ..... $ 15.00
(b) Admission more than 75¢ per event 25.00

(25) For amateur and professional prize-fights or boxing and wrestling contests:

(a) Admission not more than 75¢ per event ..... $ 15.00
(b) Admission more than 75¢ per event 25.00

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals, bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected.

(a) Admission not more than 75¢ or by invitation

Per event ..... $ 15.00

(b) Admission more than 75¢ per event 25.00

(27) For Carnival Balls .....$ 25.00

(28) For philharmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner.

(a) Admission not more than 75¢ or by invitation
Per event .....$ 15.00

(b) Admission more than 75¢ 25.00

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged.
Per year .....$ 50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted.
Per year .....$ 25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner.
Per year $100.00

(32) For dancing when admission is charged:

(a) Admission not more than 75¢ per event .....$ 15.00

(b) Admission not more than $1.99 per event 25.00

(c) Admission $2.00 or more per event . 50.00

(33) For a private dance in a public hall.
Per event .....$ 15.00

(34) To give a rummage sale.
Per event .....$ 15.00

(35) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof.
Per location, per year $250.00

(36) To sell flowers on the city sidewalks or streets
Per sales outlet, per year .....$ 50.00

(37)-(40). Reserved.

(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or un-

natural sex acts or otherwise appeal to sexually prurient interests and which establishments cater exclusively to adults $10,000.00

(C.C.S., Ord. No. 15,510, § 1; C.C.S., Ord. No. 17,633, § 1; C.C.S., Ord. No. 17,989, § 3; M.C.S., Ord. No. 3027, § 1, 3-4-65; M.C.S., Ord. No. 4346, § 1, 7-16-70; M.C.S., Ord. No. 4359, § 1, 8-6-70; M.C.S., Ord. No. 4360, § 1, 8-6-70; M.C.S., Ord. No. 4439, § 2, 12-18-70; M.C.S., Ord. No. 4555, §§ 1—5, 5-13-71; M.C.S., Ord. No. 4744, §§ 1, 2, 12-8-71.)

Section 46-1.1 Permits valid in the Vieux Carré.

Permits designated by the following numbers of Section 46-1 are valid within the area designated as the Vieux Carré, which is defined as the area bounded by the river, the uptown side of Esplanade Avenue, the river side of North Rampart Street and the lower side of Iberville Street, to wit: Sections (5), (10), (12), (19), (21), (24) through and including (36) and (41). (M.C.S., Ord. No. 4744, § 3, 12-8-71.)

5/1/72

A true Copy of Sections 46-1 and 46-1.1 of the City Code, as amended through December 31, 1971.

/s/ ROGER L. SARRAT
ROGER L. SARRAT
CLERK OF COUNCIL

APPENDIX B

CHAPTER 46

PERMITS[1]

Section 46-1. Permits required for various callings or occasions; schedule of fees therefor.[2]

Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:

(1) To sell the following items on city streets during Mardi Gras season beginning January 6 thru Mardi Gras Day:

---

1 For charter provisions with respect to permits, including a definition of "permit" as there used, see Char., §§ 4-701 and 4-702. For provisions requiring a permit for engaging in various occupations or undertakings dealt with in the other chapters hereof, see those chapters.

2 For licenses on other coin operated machines, see Chapter 16, Coin Operated Machines.

(A) For a fixed location:

(a) (1) To sell novelties ..... $ 50.00

(2) To sell candies, nuts and confections 50.00

(3) To sell sandwiches and soft drinks 50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras season. This deposit will be forfeited thirty (30) days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, property or rights-of-way may set up their vehicles or stands during parade time only. Parade time shall be defined as that time commencing two (2) hours before the start of a parade and

ending two (2) hours after the passing of the parade. This provision will not apply when there is more than one parade on any Calendar Day in which case vendor must move two (2) hours after the end of the last parade for that Calendar Day.

(e) Where the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the city shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width.

(h) All vendors selling from fixed locations shall have the

mayoralty permit as provided for in this section publicly displayed by the permittee at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras permits for vendors from fixed locations whether on private or public property shall be issued for the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. to the river side of Dauphine St.

(B) For moving locations:

(a) (1) To sell novelties .....$ 25.00
(2) To sell candies, nuts and confections 25.00
(3) To sell sandwiches and soft drinks 25.00

(b) All moving vendors must keep moving except when making a sale.

(c) The Department of Finance shall provide moving vendors at their cost with a Mardi Gras Mayoralty Badge which must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this chapter. A permittee shall be required to

issue a Mardi Gras Mayoralty Badge to each of his agents or employees and failure to do so shall constitute a violation of this Chapter by the permittee.

(d) No Mardi Gras moving vendors shall be permitted in the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. and to the river side of Dauphine St.

(2) To sell novelties on the city streets other than during the Mardi Gras season.

Per sales outlet, for one year ....$ 25.00

(3) To sell candies, nuts and confections on foot or from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.

Per sales outlet, per year .....$ 25.00

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.

Per sales outlet, per year .....$ 25.00

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets or public places other than during the Mardi Gras season.

Per sales outlet, per year .....$ 25.00

(6) To peddle cooked food, cakes, pies, etc., other than during the Mardi Gras season.

Per sales outlet, per year .....$ 50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places.

Per sales outlet, per year .....$ 25.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles.

Per vehicle, per year .....$ 50.00

(9) To sell home-manufactured articles or home-grown products on foot.

Per year .....$ 25.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square.

Per year .....$ 40.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc., on city streets or public places.

Per year .....$ 15.00

(12) To sell tickets to supper to be held in private homes.

Per event .....$ 15.00

(13) Demonstrations of food products or devices in public places or markets, etc.

Per engagement .....$ 25.00

(14) To distribute samples, canvass on city streets or from house to house.

(a) For crew manager, per year .....$ 25.00
(b) For each crew member, per year.. 15.00

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property.

(a) Per year $100.00
(b) Per month 15.00

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed.

Per year .....$ 25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph.

Per year $250.00

(18) To operate a hand organ in the city streets.

Per year .....$ 15.00

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Section

51:31 to 51:41 of the Revised Statutes of Louisiana.

Per sale .....$ 25.00

(20) Weighing devices, etc. on sidewalks or in public places.

Per nickel machine, per year ....$ 25.00
Per penny machine, per year 15.00

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted.

Per month .....$ 25.00

(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis.

Per year in addition to license ...$100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.

Per year $100.00

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:

(a) Admission not more than 75¢ per event .....$ 15.00
(b) Admission more than 75¢ per event 25.00

(25) For amateur and professional prize-fights or boxing and wrestling contests:

(a) Admission not more than 75¢ per event .....$ 15.00
(b) Admission more than 75¢ per event 25.00

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals, bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected.

(a) Admission not more than 75¢ or by invitation
Per event .....$ 15.00
(b) Admission more than 75¢ per event 25.00

(27) For Carnival Balls .....$ 25.00

(28) For philharmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner.

(a) Admission not more than 75¢ or by invitation
Per event .....$ 15.00
(b) Admission more than 75¢ 25.00

(29) For orchestras in restaurants or business establishments for purposes of

entertainment or dancing when no admission is charged.

Per year ..... $ 50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted.

Per year ..... $ 25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner.

Per year $100.00

(32) For dancing when admission is charged:

(a) Admission not more than 75¢ per event ..... $ 15.00

(b) Admission not more than $1.99 per event 25.00

(c) Admission $2.00 or more per event . 50.00

(33) For a private dance in a public hall.

Per event ..... $ 15.00

(34) To give a rummage sale.

Per event ..... $ 15.00

(35) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof.

Per location, per year $25.00

(36) — (40). Reserved.

(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or unnatural sex acts or otherwise appeal to sexually prurient interests and which establishments cater exclusively to adults $10,000.00

(C.C.S., Ord. No. 15,510, § 1; C.C.S., Ord. No. 17,633, § 1; C.C.S., Ord. No. 17,989, § 3; M.C.S., Ord. No. 3027, § 1, 3-4-65; M.C.S., Ord. No. 4346, § 1, 7-16-70; M.C.S., Ord. No. 4359, § 1, 8-6-70; M.C.S., Ord. No. 4360, § 1, 8-6-70; M.C.S., Ord. No. 4439, § 2, 12-18-70; M.C.S., Ord. No. 4555, §§ 1—5, 5-13-71.)

5/1/72

A true copy of Section 46-1 of the City Code, as amended through June 30, 1971.

/s/ ROGER L. SARRAT
ROGER L. SARRAT
CLERK OF COUNCIL

[4] MOTION FOR CONTINUANCE

(Number and Title Omitted)

Filed: Aug. 14, 1972

Plaintiff moves this court for a two week continuance of the hearing on a preliminary injunction in this matter set for August 16, 1972, for the following reasons: The attorney for the defendants has advised counsel for plaintiff that the city is considering revising the ordinance in question and has requested that the hearing in the above matter be continued for two weeks in the interest of seeking a compromise.

/s/ WILLIAM E. RITTENBERG
William E. Rittenberg
American Civil Liberties Union
of La.
Attorney for Plaintiff
606 Common Street
New Orleans, Louisiana 70130
522-0617

Dated: August 14, 1972

ORDER

IT IS HEREBY ORDERED, that the hearing on a preliminary injunction in the above matter be continued from August 16, 1972 and reset on the 30 day of August, 1972 at 2:00 P.M. o'clock.

/s/ JACK M. GORDON
DISTRICT JUDGE

(Certificate of Service Omitted in Printing)

[5] MOTION FOR CONTINUANCE

(Number and Title Omitted)

Filed: Aug. 30, 1972

Plaintiff moves this Court for a continuance of the hearing on a preliminary injunction in this matter set for August 30, 1972, for the following reasons: Attorney for Plaintiff has agreed to not press this matter until such time that the City Council of New Orleans acts to amend its ordinance which action the City Council is presently undertaking.

/s/ JOEL P. LOEFFELHOLZ
JOEL P. LOEFFELHOLZ
ASSISTANT CITY ATTORNEY
715 S. Broad St.
822-5410

Dated: August 29, 1972

ORDER

IT IS HEREBY ORDERED, that the hearing on a preliminary injunction in the above matter be continued from August 30, 1972 and reset on the 4th day of October, 1972 at 10:00 A.M. o'clock.

/s/ JACK M. GORDON
JUDGE

(Certificate of Service Omitted in Printing)

[6] FIRST SUPPLEMENTAL AND AMENDING PETITION

(Number and Title Omitted)

Filed: Oct. 3, 1972

The supplemental and amending petition of NANCY DUKES, d/b/a LOUISIANA CONCESSIONS, with respect represents:

I

Plaintiff reaffirms and realleges all of the allegations contained in her original petition.

II

Plaintiff avers that since the original complaint in this matter was filed an ordinance was enacted which amended Section 46-1.1. of Chapter 46 (hereinafter referred to as "the amended ordinance") and purports to outlaw all pushcart sales of food.

III

The amended ordinance also adds the following:

> "Vendors who have continually operated the same business within the Vieux Carre under the authority of this Chapter for eight years prior to January 1, 1972 may obtain a valid permit to operate such business within the Vieux Carre."

IV

The defendants are trying to obtain the same unconstitutional result with different wording to the statute. Under the amended ordinance "Lucky Dog" will continue to be the only business permitted to sell food from push carts and the plaintiff and all others will be prohibited.

V

Plaintiff avers that said ordinance is unconstitutional on its face in that it violates the Due Process and Equal Protection clauses of the 14th Amendment of the United States Constitution and Article I, Section 2 of the Louisiana Constitution that there is no reasonable basis or compelling state interest for the ordinance and the only purpose it serves is to give "Lucky Dog" a virtual monopoly by prohibiting everyone else.

VI

If said ordinance is allowed to remain in effect, petitioner will and is suffering irreparable harm, damage, loss of income and injury of good will. It is

therefore necessary that this Court permanently restrain and enjoin defendants and their agents from enforcing the amended ordinance and to declare said statute unconstitutional as applied to plaintiff and on its face.

WHEREFORE, plaintiff respectfully prays:

a) That this court declare Section 46-1.1. of Chapter 46 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, unconstitutional as applied to plaintiff and on its face on the grounds that it violates the due process and equal protection clauses of the United States Constitution.

b) That this Court grant preliminary and permanent injunctions restraining defendants and their agents from enforcing said ordinance.

c) Plaintiff reiterates her prayer as contained in her original petition.

/s/ WILLIAM E. RITTENBERG
WILLIAM E. RITTENBERG
American Civil Liberties Union
of La.
606 Common Street
New Orleans, Louisiana 70130
522-0617

(Certificate of Service Omitted in Printing)

[7] 3. MOTION OF PLTFS. FOR A PRELIMINARY INJUNCTION: 10:00 AM

Wednesday, October 4, 1972

Counsel not present.

This matter is Continued by the Court to be reset.

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[8] MINUTE ENTRY of October 11, 1972

(Number and Title Omitted)

Filed: Oct. 13, 1972

A STATUS CONFERENCE was held this date to discuss the above captioned matter.

Present: William E. Rittenberg, Esq. for plaintiff

Joel P. Loeffelholz, Esq., Asst. City Attorney for defendants

Counsel informed the Court of the progress of this action and the recent legislative revision of the ordinance in dispute. The Court concluded that the preparatory stages for trial of this action should commence immediately.

Accordingly, IT IS ORDERED that:

(1) Defendants shall file an answer to plaintiff's complaint and amended complaint no later than Tuesday, October 24, 1972.

(2) Discovery shall be completed by Friday, November 24, 1972.

(3) Upon completion of discovery, counsel shall advise the Court in writing, whereupon the Court will schedule a status conference in order to arrive at a trial date.

/s/ JACK M. GORDON

William E. Rittenberg, Esq.
Joel P. Loeffelholz, Esq.

---

[9] ANSWER

(Number and Title Omitted)

Filed: Oct. 25, 1972

Now into Court through undersigned counsel comes the City of New Orleans and the Honorable Moon Landrieu and for answer to this complaint state:

1.

No answer to paragraphs 1, 2, and 3 is required but if one should be then same is denied.

2.

No answer to paragraphs 4, 5, and 6 is required but if one should be then same is denied.

3.

Paragraph 7 is denied for lack of sufficient information to justify a belief therein.

4.

Paragraph 8 is denied as alleged as it is now moot because of a new ordinance.

5.

Paragraph 9 is moot because of a new ordinance.

6.

Paragraph 10 is denied.

7.

Paragraph 11 is not applicable due to the passage of a new ordinance.

8.

Paragraph 12 is not applicable because of a new ordinance.

9.

Paragraphs 13, 14, 15, and 16 are not applicable due to the passage of a new ordinance.

WHEREFORE, defendants pray that this answer be deemed good and sufficient and that this complaint be dismissed at complainants costs.

/s/ JOEL P. LOEFFELHOLZ
JOEL P. LOEFFELHOLZ
ASSISTANT CITY ATTORNEY
715 S. Broad Street
822-5410

BLAKE G. ARATA
CITY ATTORNEY

(Certificate of Service Omitted in Printing)

---

[10] ANSWER TO SUPPLEMENTAL AND AMENDING COMPLAINT

(Number and Title Omitted)

Filed: Oct. 25, 1972

Now into Court through undersigned counsel comes the City of New Orleans and the Honorable Moon Landrieu and for answer to the supplemental and amending complaint state:

I.

Paragraph I requires no answer but if one is necessary same is denied.

II.

Paragraph II is denied as alleged.

III.

Admitted.

IV.

Paragraph IV is categorically denied and defendants call for strict proof thereof.

V.

Paragraph V is categorically denied and defendants call for strict proof thereof.

VI.

Paragraph VI is categorically denied and defendants call for strict proof thereof.

WHEREFORE, defendants pray that this answer be deemed good and sufficient and that this complaint be dismissed at complainants cost.

/s/ JOEL P. LOEFFELHOLZ
JOEL P. LOEFFELHOLZ
ASSISTANT CITY ATTORNEY
715 S. Broad Street
New Orleans, Louisiana
822-5410

BLAKE G. ARATA
CITY ATTORNEY

(Certificate of Service Omitted in Printing)

[11] PLAINTIFF'S INTERROGATORIES

(Number and Title Omitted)

Filed: Oct. 31, 1972

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff directs the following interrogatories to defendants. These interrogatories are to be answered, in accordance with the provisions of Rule 33, within thirty (30) days of service.

1. a) Please list the name, address, type of food sold and type of license issued to all vendors licensed to sell food from push carts in the Vieux Carre on August 1, 1972.

b) State how long each vendor licensed on August 1, 1972 had continually operated within the Vieux Carre under the authority of Chapter 46 of the Municipal Code.

2. a) Please list the name, address, type of food sold, and type of license issued to all vendors licensed to sell food from push carts in the Vieux Carre at the present time.

b) State how long each vendor presently licensed has continually operated within the Vieux Carre under the authority of Chapter 46 of the Municipal Code.

3. Please give the total number of vendors selling food from push carts in the Vieux Carre on August 1, 1972.

4. Please give the total number of vendors selling food from push carts in the Vieux Carre at the present time.

5. What was the reason why you recommended to the City Council that they change the ordinance sued upon?

6. Is defendant, The Honorable Moon Landrieu, aware of any members of his administration or his friends that have any kind of an economic interest in Lucky Dog, Inc.?

7. If the answer to interrogatory #6 is affirmative, please give the names of the individuals and the economic interest these individuals have.

RESPECTFULLY SUBMITTED:
/s/ WILLIAM E. RITTENBERG
WILLIAM E. RITTENBERG
Attorney for Plaintiff
606 Common Street
New Orleans, Louisiana
522-0617

DATED: November 1, 1972

(Certificate of Service Omitted in Printing)

[12] MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND ATTORNEY FEES

(Number and Title Omitted)

Filed: Dec. 8, 1972

Now into Court comes the plaintiff, through undersigned counsel, and move this Court to Compel the defendant to answer interrogatories Number 5, 6 and 7 which defendant has refused to answer although said answers are very relevant to plaintiff's case. Plaintiff further moves for expenses and reasonable attorneys fees for prosecuting this motion.

Respectfully submitted:
/s/ WILLIAM E. RITTENBERG
WILLIAM E. RITTENBERG
Attorney for Plaintiff
606 Common Street
New Orleans, Louisiana 70130
522-0617

DATED: December 8, 1972

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ANSWERS TO INTERROGATORIES

(Number and Title Omitted)

Plaintiffs in this case is attempting to prove that the City of New Orleans is unconstitutionally protesting and giving advantage to plaintiff's chief competition, "Lucky Dog, Inc." Interrogatories Number 5, 6 and 7 propounded to defendants are attempts to sbustantiate plaintiff's allegation. For this reason they are obviously relevant and material.

Interrogatory No. 5 is not ambiguous, it is not directed to counsel, it is directed to the defendant, Mayor of New Orleans.

There is no question but that this court has the power to compel adequate answers, *Cone Mills Corp.* v. *Joseph Bancroft and Sons Co.*, 33 F.R.D. 318 (D. Del. 1963). This power is incorporated into Rule 37 F.R.C.P. along with the right to expenses and reasonable attorney's fees for prosecuting this motion.

Respectfully submitted:
/s/ WILLIAM E. RITTENBERG
WILLIAM E. RITTENBERG
Attorney for Plaintiff
606 Common Street
New Orleans, Louisiana 70130
522-0617

(Certificate of Service Omitted in Printing)

[13] 4. MOTION OF PLTF. TO COMPEL ANSWERS TO INTERROGATORIES & ATTORNEY FEES: 10:00 AM

Wednesday, January 10, 1973

This matter is Continued to Wednesday, January 24, 1973, at 10:00 AM.

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[14] ANSWER TO INTERROGATORIES

(Number and Title Omitted)

Filed: Jan. 24, 1973

ANSWER TO INTERROGATORY NO. 1

A.

1. Lucky Dogs, Inc.
   211 Decatur Street
   Hot Dogs;
   21 mayorality permits
   21 no fixed place of business
   occupational licenses
   Issued to Lucky Dogs, Inc. *or* agent.

2. Oliver Lee Roberts
   714 Carondelet Street
   Ice Cream;
   1 mayorality permit;
   no occupational license
   required for ice cream

These were the *only* permits issued and *not* stamped "NOT VALID IN VIEUX CARRE".

(B)

Lucky Dogs: March 1, 1950
Roberts: under his name since March, 1972, before that he was under another company; permit for 20 years.

ANSWER TO INTERROGATORY NO. 2

(A)

See No. 1A above.

(B)

See No. 1B above.

ANSWER TO INTERROGATORY NO. 3

Twenty-Two (22)

ANSWER TO INTERROGATORY NO. 4

Twenty-two (22)

ANSWER TO INTERROGATORY NO. 5

Objected to as being ambiguous because it cannot be determined who the question is directed to; however, if it is directed to undersigned counsel then he answers

same by stating that he did not recommend any changes in the ordinance sued upon.

ANSWER TO INTERROGATORY NO. 6

Objected to as being irrelevant and immaterial to the issue involved in this case as neither Lucky Dog, Inc. or any "friends" of the mayor are parties to this suit.

ANSWER TO INTERROGATORY NO. 7

Not applicable.

/s/ JOEL P. LOEFFELHOLZ
ASSISTANT CITY ATTORNEY
715 S. Broad Street
822-5410

BLAKE G. ARATA
CITY ATTORNEY

(Certificate of Service Omitted in Printing)

[15] 9. MOTION OF PLTF. TO COMPEL ANSWERS TO INTERROGATORIES & ATTORNEY FEES: 10:00 AM

WEDNESDAY, JANUARY 24, 1973

Argument; *DENIED.*

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[16] MINUTE ENTRY of Feb. 26, 1973

(Number and Title Omitted)

Filed: Feb. 26, 1973

The Court having been informed that discovery in this case is now completed,

IT IS ORDERED that a STATUS CONFERENCE is scheduled herein for Thursday, April 19, 1973, at 2:00 o'clock P.M., in chambers.

/s/ JACK M. GORDON

William E. Rittenberg, Esq.
Joel P. Loeffelholz, Esq.

[17] **MINUTE ENTRY OF Apr. 19, 1973**

(Number and Title Omitted)

Filed: Apr. 20, 1973

A STATUS CONFERENCE in the above captioned matter was convened this date.

Present: William E. Rittenberg, Esq. representing plaintiff

Joel P. Loeffelholz, Esq., Asst. City Attorney representing defendants

Counsel agreed with the Court's recommendation that motions for summary judgment by each party would be the most efficient and just approach in resolving this matter. Accordingly,

IT IS ORDERED that the parties file a set of stipulated facts and the corresponding motions for summary judgment by Monday, June 18, 1973.

/s/ JACK M. GORDON

William E. Rittenberg, Esq.
Joel P. Loeffelholz, Esq.

[18] MOTION TO ADD COUNSEL

(Number and Title Omitted)

Filed: Jun. 15, 1973

On motion of Nancy Dukes, Plaintiff, appearing herein through undersigned counsel, and on suggesting to the court that George M. Strickler, Jr. has been associated as co-counsel in the above numbered and entitled proceeding and, accordingly, his name should be entered in the record hereof.

Respectfully submitted:
/s/ WILLIAM E. RITTENBERG
WILLIAM E. RITTENBERG
Attorney for Plaintiff
2833 General Pershing Street
New Orleans, Louisiana 70115
891-4414

ORDER

Considering the above and foregoing,

IT IS ORDERED that the name of George M. Strickler, Jr. be entered on the record as co-counsel for plaintiff in the above entitled and numbered cause.

NEW ORLEANS, LOUISIANA, this 18 day of June, 1973.

/s/ JACK M. GORDON
JUDGE

(Certificate of Service Omitted in Printing)

[20] MINUTE ENTRY
SEPTEMBER 5, 1973

GORDON, J.

The following cases were called this day to show cause why they should not be DISMISSED:

After hearing, IT IS ORDERED that the said cases be disposed of as indicated below:

CIVIL ACTION

* * * *

72-2042 NANCY DUKES, ETC. VS THE CITY OF NEW ORLEANS, ET AL

Attorneys: William E. Rittenberg, Esq.
George M. Strickler, Jr., Esq.
Joel P. Loeffelholz, Esq.

Last Action: 6/15/73: M & O that Geo. M. Strickler, Jr., be entered as co-counsel for pltf.

ORDERED: PASSED:

* * * *

/s/ JACK M. GORDON
UNITED STATES
DISTRICT JUDGE

[21] MOTION TO ADD COUNSEL

(Number and Title Omitted)

Filed: Sept. 10, 1973

On motion of Nancy Dukes, plaintiff, appearing herein through undersigned counsel, and on suggesting to the Court that Okla Jones has been associated as co-counsel in the above numbered and entitled proceeding and, accordingly, his name should be entered in the record hereof.

Respectfully submitted:
/s/ WILLIAM E. RITTENBERG
William E. Rittenberg
Attorney for Plaintiff
2833 Gen. Pershing
New Orleans, Louisiana 70115
Telephone: 891-4414

ORDER

Considering the above and foregoing,

IT IS ORDERED that the name of Okla Jones be entered on the record as co-counsel for plaintiff in the above entitled and numbered cause.

New Orleans, Louisiana, this 10 day of September, 1973.

/s/ JACK M. GORDON
JUDGE

[22] MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

Filed: Sept. 10, 1973

Plaintiff moves the Court as follows:

1. That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiff's favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law; or, in the alternative,

2. If summary judgment is not rendered in plaintiff's favor upon the whole case or for all the relief asked and a trial is necessary, that the Court, at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, ascertain what material facts are actually and in good faith controverted, and thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

This motion is based upon:

(a) The pleadings as set forth by plaintiff in the original and amended petitions filed in this matter;

(b) Affidavit of Nancy Dukes made in support of this motion for summary judgment;

(c) Defendants' answers to interrogatories as filed herein;

(d) A statement of material facts as to which plaintiff contends there is no genuine issue to be tried, which is submitted herewith in accordance with Rule 4(e) of the Rules of this Court.

/s/ OKLA JONES II
Okla Jones II
Attorney for Plaintiff
606 Common Street
New Orleans, Louisiana 70130
Telephone: 522-0617

(Notice and Certificate of Service Omitted in Printing)

MEMORANDUM IN SUPPORT OF PLAINTIFF DUKES' MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

MAY IT PLEASE THE COURT:

Plaintiff Nancy Dukes (hereinafter "Dukes") brought this action against the City of New Orleans and Moon Landrieu, alleging the deprivation of rights secured by the Fourteenth Amendment to the United States Constitution and praying for declaratory and injunctive relief in the enforcement of New Orleans Ordinance 828 M.C.S. 46.1.1, as amended, against the plaintiff and her agents.

This cause of action simply avers that the said Ordinance is arbitrary, unreasonable, discriminatory and unconstitutional on its face in that it allows other similar and comparable businesses to operate in the Vieux Carre while denying plaintiff due process and equal protection of the law. Furthermore, it alleges that Ordinance No. 4744, as amended in August 1972, does not further any legitimate goals of the State, and therefore the State does not have a "compelling state interest" in the enforcement of said Ordinance. Thus the Ordinance manifestly violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

FACTS

Dukes (d/b/a "Louisiana Concessions") is in the business of selling food, drinks, confections and novelties from movable push carts on the public streets, sidewalks, and/or public and private places in downtown New Orleans.[1]

The prime source of business is the Vieux Carre, particularly during the summer months of May through September, when average weekly sales total $385.00. These sales are achieved through various salesmen she employs to assist in the business pursuant to mayorality permits on a percentage basis with them.

On January 17, 1972, Dukes' manager Frank D. Silker, was arrested for violating New Orleans City Ordinance No. 4744 (amending Chapter 46, Section 1),

1 Affidavit of Nancy Dukes, page 1

which in effect banned the vending from push carts of all foodstuffs except hot dogs and hot tamales in the Vieux Carré.[2] The charge was subsequently dismissed. But as a result of this arrest, Dukes initiated a civil suit on August 1, 1972, seeking declaratory and injunctive relief.

On August 31, 1972, the City of New Orleans proceeded to amend Municipal Ordinance Section 46-1 to read that those vendors who had not been operating a business for eight or more years before January 1, 1972, would be prohibited a permit to operate in the Vieux Carré.[3]

Plaintiff then amended her complaint challenging the newly amended ordinance on the same grounds as the old, and further alleging that the defendants were attempting to obtain the same unconstitutional result with different words. It also alleged that the City was attempting to give "Lucky Dog" (a vendor similarly pursuing the same occupation as Dukes) an exclusive monopoly since it would be the only business to sell food from pushcarts in the Vieux Carré. To disallow plaintiff to operate in the Vieux Carré would be detrimental to her business primarily because the vast majority of her customers come from the "Quarter."

2 See pertinent text of the Ordinance in plaintiff's Original Complaint, pp. 2 and 3; and Exhibit "A" of plaintiff's Memorandum in Support of Preliminary Injunction.

3 See plaintiff Dukes' Separate Statement of Material Facts in Support of her Motion for Summary Judgment Made Pursuant to Rule 4(e), Number 7, p. 2.

Plaintiff Dukes has filed this Motion for Summary Judgment on the ground that there is no genuine issue as to any material facts as presented by your mover; therefore, she is entitled to a judgment as a matter of law.

ARGUMENT

1. *Classification Must Be Reasonable and Non-discriminatory.*

It is indubitably clear that cities and municipalities have the power to impose restrictions on a lawful calling such as hawking and peddling as long as the exercise is in conformity with constitutional requirement that such restrictions operate equally upon all persons pursuing the same business or profession under the same circumstances. *City of New Orleans v. Fargot*, 40 So. 735, 116 La. 369 (1906); *City of Lake Charles v. Wallace*, 170 So.2d 654, 247 La. 285 (1964). Therefore, according to *City of Lake Charles v. Wallace, supra, Scott v. City of West Monroe*, 95 So.2d 343, the constitutionality of a statute cannot be sustained which selects particular individuals from a class or locality and subjects them to particular rules or imposes upon them special obligations or burdens from which others in the same locality are exempt. Thus, if a statute or ordinance allows one class of individuals to engage in what is presumptively a legitimate business, while denying such rights to others — as herein involved — it must be based upon some principle which may reasonably promote the public health, safety or welfare. See 11 Am.Jur. §285, 286.

Just as it is clear that cities and municipalities may restrict certain business, it is just as clear that such regulations of occupations cannot be valid where it amounts to an arbitrary or unwarranted interference with the right of the citizen to pursue a lawful business. In *Cheek v. City of Charlotte*, 273 N.C. 293, 160 S.E.2d 18 (1968), a city ordinance was passed which regulated licensing and hours of business of massage parlors, and prohibiting masseurs or masseuses from treating an individual of the opposite sex, but excluded certain places such as hospitals and the YM(W)CA. The Court, in holding the ordinance unconstitutional (violating Fourteenth Amendment Equal Protection) stated:

> "Recognizing that even though massage parlors are proper subjects for regulation under the city police power, *such regulation, however, must be uniform, fair, impartial in its operation*. Even though statutes are passed in the interest of the public health, safety, or morals, they are void as class legislation whenever they are made to apply arbitrarily only to certain persons or classes of persons or to make an unreasonable discrimination between persons or classes."
>
> (emphasis added)
> 160 S.E.2d at 23.

2. *Ordinance Must Satisfy Both Rational Basis and Compelling State Interest Tests*

The thrust of defendants' argument relative to the constitutionality of the Ordinance is the creation of

the Vieux Carre Commission in the Louisiana Constitution.[4] See La.Const.Art.14, §22A. Because of this creation, they assert that "The City of New Orleans is given broad and sweeping powers of administration and police in the Louisiana Constitution Article 14, Section 22 and Act 159 of 1912."[5]

The pertinent provision of the Louisiana Constitution (Art. 14, §22A) provides:

> "Duties of Commission. Hereafter and for the public welfare in order that the quaint and distinctive character of the Vieux Carre section of the City of New Orleans may not be injuriously affected, and in order that the value to the community of those buildings having architectural and historical worth may not be impaired, *and in order that a reasonable degree of control may be exercised over the architecture of private and semi-public buildings erected on or abutting the public streets of said Vieux Carre section . . .*"
>
> (emphasis added)

At the outset, it should be noted that the Louisiana Supreme Court in *Vieux Carre Property Owners and Associates, Inc. v. City of New Orleans*, 167 So.2d 367, the Court declared an ordinance by the City of New Orleans unconstitutional and contrary to Louisiana Constitution, Article 14, §22A, which attempted to exempt certain areas of the Vieux Carre. In interpreting the

4 Defendants' Memorandum in Opposition to Preliminary Injunction, pp. 3-4.

5 Ibid., at p. 4

above provisions of the Constitution, the Court stated that the language quoted simply means that the Vieux Carre section as a whole "shall be subject to the 'reasonable control' of the city and the commission. . . . But the city and commission must exercise 'reasonable control.' " 223 La. 14 (1953).

Assuming that the purpose of defendants' Ordinance is to protect public welfare and preserve the antiquity of the Vieux Carre, plaintiff fails to see how allowing other vendors to operate, the "threat," if there truly is one, is subsided. Thus, is this a real purpose, necessary and adequate to sustain an unequal classification, or is it rather a "feigned purpose" to eliminate all vendors except Lucky Dogs? Plaintiff Dukes contends that the latter exists herein.

In observing the classification, why is eight years the cut-off date? Is it not just an arbitrary date designed to eliminate all vendors except Lucky Dogs? Plaintiff again contends that the latter is the result of the Ordinance, whether intentional or otherwise.

The District Court for the Northern District of Texas in *Corey v. City of Dallas*, 352 F.Supp. 977 (1972), struck down an ordinance making it unlawful for any person to administer a massage to any person of the opposite sex. The Court held the ordinance unconstitutional in violation of the Fourteenth Amendment equal protection, unreasonable exercise of police power, and unreasonable classification. The theme of that case is stated in pertinent part as follows:

> "In order for legislation affecting a fundamental right to withstand a challenge under the Equal Protection Clause, it is *incumbent on the governmental authorities to show that there was no other practical manner in which the objective of the legislation could be accomplished and that the interest of the government authority is superior to the rights of the persons who may be adversely affected by the legislation.*"
>
> (emphasis added)
> 352 F.Supp. at 980

The United States Supreme Court in *McLaughlin v. State of Florida*, 379 U.S. 184, 85 S.Ct. 283 (1964), held — in which struck down the miscegenation laws — that "if the law deals alike with all of a certain class it is not obnoxious to the Equal Protection Clause." The Court also pointed out that arbitrary and capricious selections can never be justified by calling it classification. See, e.g., *American Sugar Ref. Co. v. Louisiana*, 179 U.S. 89, 21 S.Ct. 23; see also *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 31 S.Ct. 337; and *McGowan v. State of Md.*, 366 U.S. 420, 81 S.Ct. 1153 (1961).

McLaughlin, supra, further asserts that courts in inquiring about equal protection should not stop after a showing of equal application among the members of the class as defined by the ordinance or legislation. The Court must seek to determine the question of whether the classifications drawn are reasonable in light of its purpose — in this case, whether there is an arbitrary or intentional discrimination between the

classes covered by New Orleans' City Ordinance and those excluded.

3. *An Ordinance Which Curtails the Right to Earn a Livelihood — and Not Just Prohibit It Completely — Violates the Fourteenth Amendment.*

The right to earn a livelihood by pursuing one's legitimate occupation is a right implicit in the Fourteenth Amendment. *Terrance v. Thompson*, 263 U.S. 197 (1923); *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932); and *Truax v. Raich*, 239 U.S. 33 (1915). Furthermore, the Supreme Court has recognized that it is not necessary that a right be specifically stated or expressed in the Constitution before it is considered a fundamental right. *Shapiro v. Thompson*, 394 U.S. 618 (1969).

Plaintiff Dukes herein has been curtailed and/or restricted in the pursuit of a legitimate occupation by not being allowed to sell her products in the Vieux Carre where the majority of tourists go and where business is the most profitable.

New State Ice Co. v. Liebmann, supra, is dispositive of this legal proposition and states it thusly:

> "Plainly, a regulation which has the effect of denying or *unreasonably curtailing* the common right to engage in a lawful private business . . . cannot be upheld consistent with the Fourteenth Amendment. Under that amendment, nothing is more clearly settled than that it is beyond the power of a state under the

guise of protecting the public, arbitrarily, [to] interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restriction upon them."

(emphasis added)
285 U.S. at 278

4. *An Ordinance Which Is Unreasonable and Arbitrary Is Unconstitutional On Its Face*

Plaintiff reiterates that the Ordinance herein involved is not based on a fundamental difference in its classification of said businesses, that it is arbitrary and unreasonable, thereby, being unconstitutional on its face.

A city ordinance governing the hours of billiard halls was held to be unconstitutional because there was no rational relation for placing billiard halls in a unique class, separate and apart from all other businesses which offer like facilities and amusement (i.e. bowling alleys, etc.) in *State v. Greewood*, 280 N.E. 651, 187 S.E.2d 8 (1972). The Court held that the classification was arbitrary and unreasonable and thus, in violation of the Fourteenth Amendment Equal Protection even though the asserted purpose of the ordinance was to promote the public health, safety and welfare.

The City of New Orleans Ordinance suffers from all the defects of the North Carolina ordinance and more. The New Orleans Ordinance not only discriminates among persons following the same occupation and business, but also has drawn an arbitrary date in determining whether or not to allow a legitimate business to be validly licensed.

Accordingly, there should be no issue of material fact with respect to whether the said Ordinance is arbitrary, unreasonable, discriminatory and therefore unconstitutional, and plaintiff's motion for summary judgment with respect thereto should be granted.

CONCLUSION

It is respectfully submitted that plaintiff's motion for summary judgment should be granted, and that New Orleans Ordinance 828 M.C.S. 41.1.1 as amended be declared unconstitutional and thereby in violation of the due process and equal protection clause of the United States Constitution.

Respectfully submitted:

/s/ OKLA JONES II
Okla Jones II
American Civil Liberties
Union of Louisiana
606 Common Street
New Orleans, Louisiana 70130
Telephone: 522-0617
Attorney for Plaintiff
Nancy Dukes

PLAINTIFF DUKES' SEPARATE STATEMENT OF MATERIAL FACTS IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT, MADE PURSUANT TO RULE 4(e)

(Number and Title Omitted)

1. Plaintiff Nancy Dukes (hereinafter "Dukes") does business under the name Louisiana Concessions, and is engaged in the sale and distribution of food stuff, drinks, confections and novelties throughout the public streets and sidewalks of the City of New Orleans, including the Vieux Carré. She employs various salesmen or vendors to assist in her business.

2. Dukes was operating her business pursuant to valid mayorality permits in 1972, when this action was initially commenced.

3. Dukes and salesmen operated the business pursuant to the permits on a percentage basis.

4. The Vieux Carré was the prime source of business for Dukes, particularly during the summer months of May through September, when average weekly sales totaled $385.00.

5. On January 17, 1972, Dukes' manager, Frank D. Silker, was arrested for violating New Orleans City Ordinance No. 4744 (amending Chapter 46, Section 1), which in effect banned the vending from pushcarts of all food stuffs except hot dogs and hot tamales in the Vieux Carré. The charge was subsequently dismissed.

6. As a result of the arrest of her manager, Dukes filed a civil suit on August 1, 1972, seeking a declaratory judgment and injunctive relief.

7. On August 31, 1972, the City of New Orleans amended Municipal Ordinance Section 46-1, to read as follows:

> "Vendors who have continuously operated the same business within the Vieux Carre under the authority of this Chapter for eight or more years prior to January 1, 1972 may obtain a valid permit to operate such business within the Vieux Carré."

8. Through discovery, Lucky Dogs, Inc. has been shown to be the only licensed vendor that will be allowed to operate a business from a push cart in the Vieux Carré under the new amended ordinance.

9. The vast majority of Dukes' customers come from the Vieux Carré, and to disallow her to operate therein is detrimental to her business.

/s/ OKLA JONES II
Okla Jones II
Attorney for Plaintiff
606 Common Street
New Orleans, Louisiana 70130
Telephone: 522-0617

AFFIDAVIT OF FRANK D. SILIKER
IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

(Number and Title Omitted)

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

FRANK D. SILIKER,
who, after being duly sworn, deposed that:

He is the agent and manager of the business known as Louisiana Concessions, located at 8240 Apricot Street, New Orleans, Louisiana; that this business is owned and operated by one Nancy Dukes, which business consists of selling drinks, confections and novelties from pushcarts on the public streets, sidewalks and public places of the City of New Orleans, including the Vieux Carré, and that he — as agent and manager — is thoroughly familiar with the operation of this business as conducted by himself and the owner.

During the month of January 1972, on or about the 17th, affiant was arrested while conducting the said business in the Vieux Carré and charged with violation of Chapter 46, Ordinance 4744 of the City Code. At the time of the arrest he was still manager and agent of Louisiana Concessions.

Although this charge was subsequently dismissed, it produced a "chilling effect" upon both him and the owner, thus making it impossible for them to continue their business in the Vieux Carré without further fear of harrassment and prosecution.

During the course of his employment with this business, the Vieux Carré area was the prime source of business, and to disallow operation in that section of the city would be injurious and detrimental to the business.

/s/ FRANK D. SILIKER
FRANK D. SILIKER

(Jurat Omitted in Printing)

AFFIDAVIT OF NANCY DUKES
IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

NANCY DUKES,
who, after being duly sworn, deposed that:

She is the sole owner and proprietor of Louisiana Concessions, located at 8240 Apricot Street, New Orleans, Louisiana; that she has owned and operated said business for the past four and one-half years, which business consists of selling drinks, confections and novelties from hand-pushed carts on the public streets, sidewalks and public places of the City of New Orleans, including the Vieux Carré, has employed various vendors to assist her in the business, and is thoroughly familiar with the operation of that business as conducted by herself and her vendors.

Affiant was duly licensed with valid mayorality permits for said business for the year 1972, when this action was commenced. The permits were utilized by affiant and/or her salesmen, who were employed on a percentage basis. The area of the Vieux Carré was a prime source of business, and not allowing affiant or her salesmen to operate in the Vieux Carré has been very injurious and detrimental to her business.

/s/ NANCY DUKES
NANCY DUKES

(Jurat Omitted in Printing)

[23] 18. MOTION OF PLTF. FOR SUMMARY JUDGMENT: 10:00 AM.

WEDNESDAY, SEPTEMBER 19, 1973

This matter is Continued to Wednesday, October 3, 1973, at 10:00 AM.

---

[24] MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

Filed: Sept. 24, 1973

Defendants, the City of New Orleans and the Honorable Moon Landrieu, move the Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in the defendants' favor dismissing the action on the ground that there is no genuine issue as to any natural fact and that the defendants are entitled to a judgment as a matter of law.

This motion is based upon:

a) A statement of material facts as to which defendants contend there is no genuine issue to be tried;

b) Memorandum of law in support of motion for summary judgment.

/s/ JOEL P. LOEFFELHOLZ
ASSISTANT CITY ATTORNEY
715 S. Broad Street
New Orleans, La. 70119
822-7145

BLAKE G. ARATA
CITY ATTORNEY

(Notice and Certificate of Service Omitted in Printing)

DEFENDANTS' SEPARATE STATEMENT OF MATERIAL FACTS

(Number and Title Omitted)

1.

Plaintiff, Nancy Dukes, does business under the name Louisiana Concessions, and is engaged in the sale and distribution of food stuff, drinks, confections and noveltiesthroughout the City of New Orleans. She employs various salesmen to assist her in her business.

2.

Dukes was operating her business pursuant to valid mayorality permits in 1972.

3.

Dukes and salesmen operated the business pursuant to the permits on a percentage basis.

4.

On August 31, 1972, the City of New Orleans amended Municipal Ordinance Section 46-1 to read as follows:

> "Vendors who have continuously operated the same business within the Vieux Carre under the authority of this Chapter for eight or more years prior to January 1, 1972, may obtain a valid permit to operate such business within the Vieux Carre."

/s/ JOEL P. LOEFFELHOLZ
JOEL P. LOEFFELHOLZ
ASSISTANT CITY ATTORNEY
715 S. Broad Street
New Orleans, Louisiana 70119
822-7145

BLAKE G. ARATA
CITY ATTORNEY

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

Plaintiff Nancy Dukes brought this action against the City of New Orleans and Moon Landrieu alleging

denial of equal protection of the laws as guaranteed by Fourteenth Amendment to the United States Constitution.

Dukes is in the business of selling food, drinks, and novelties throughout the City of New Orleans. On January 17, 1972, one of Dukes' employees was arrested for violating New Orleans City Ordinance No. 4744 (Municipal Ordinance Section 46-1 and 46-1.1). As a result of the arrest, Dukes initiated a civil suit on August 1, 1972, seeking declaratory and injunctive relief.

The challenged section of the ordinance as contained in Section 46-1.1 states:

> "Vendors who have continuously operated the same business within the Vieux Carre under the authority of this Chapter for eight or more years prior to January 1, 1972, may obtain a valid permit to operate such business within the Vieux Carre."

Defendants have filed this motion for summary judgment on the grounds that no genuine issue of material fact exists and are therefore entitled to a judgment upholding the constitutionality of the ordinance.

In the case of *City of Lake Charles v. Wallace*, 170 So.2d 654, a decision which upheld the constitutionality of a city ordinance imposing a service charge on residents in order to defray the costs of garbage disposal, the Louisiana Supreme Court states:

> "All that is demanded by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States is that a charge affect alike all persons similarly occupied . . . The method of classification is primarily and pecularily a matter for the legislating body to determine; the courts will not interfere with the body's exercise of discretion if it is based on reason.
>
> "Due process of law and the equal protection of the law are had when the laws affect alike all persons similarly situated."

Also, the Supreme Court of the United States has stated in *McGowan* v. *State of Maryland*, 366 U.S. 420, 81 S.Ct. 1101 (1961), as follows:

> "The Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the State's objective . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

Defendants contend that the classification set forth in Municipal Ordinance 4744 (New Orleans City Code Section 46-1.1) is a legitimate classification in that it seeks to protect the area known as the Vieux Carre from needless peddlers and hawkers. Plaintiff in this

case is not invidiously discriminated against by the terms of the ordinance. In truth, the entire City of New Orleans is available to plaintiff to sell her goods with the exception of the area known as the Vieux Carré.

The interests of the City of New Orleans and the State of Louisiana are vitally affected as regards to that section known as the Vieux Carré. The economic welfare of the City of New Orleans rests on this specially designated area. It is the heart of the City's tourist industry. The incalculable value of this tourist trade prompted the City Council to adopt ordinances to preserve the integrity and to insure the economic viability of the area in a way most conducive to both tourist and citizen alike. No tourist or citizen appreciates peddlers or hawkers interfering with their rights to observe and to enjoy the beauties of the New Orleans Vieux Carré. The fact that some peddlers are allowed to peddle and not the plaintiff in this action only tends to demonstrate the City Council's interest in keeping the Vieux Carré the tourist attraction it has always been. The Council sought to allow those peddlers to remain who have over a long period of time become a part of the charm and beauty that is the Vieux Carré. The City should not be caused to lose its entire remedial scheme merely because it failed to cover every peddler at one time.

As the Supreme Court of the United States stated in *Norvell* v. *State of Illinois*, 373 U.S. 420, 83 S.Ct. 1366 (1963):

> "Exact equality is no prerequisite of equal protection of the laws within the meaning of

> the Fourteenth Amendment . . . The rough accommodations made by government do not violate the equal protection clause unless the lines drawn are hostile and invidious."

Also, in the case of *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District*, 93 S.Ct. 1224 (1973), the Supreme Court said:

> "The equal protection clause does not make every minor difference in the application of laws to different groups a violation of one Constitution."

It is therefore submitted by the defendants that the ordinance in question is constitutional and not violative of the equal protection and due process clause of the Constitution of the United States in that it promotes a compelling state and local interest and that it does not invidiously discriminate against the plaintiff in this action. Accordingly, defendants are entitled to a granting of this motion for summary judgment and a declaration by this Court of the constitutionality of this ordinance.

/s/ JOEL P. LOEFFELHOLZ
JOEL P. LOEFFELHOLZ
ASSISTANT CITY ATTORNEY
715 S. Broad Street
New Orleans, Louisiana 70119
822-7145

BLAKE G. ARATA
CITY ATTORNEY

[25] 19. MOTION OF PLTF. FOR SUMMARY JUDGMENT: 10:00 AM

WEDNESDAY, OCTOBER 3, 1973

ORDERED:
Argument: *DENIED.*

MOTION OF DEFTS. FOR SUMMARY JUDGMENT:
ORDERED:
Argument: *GRANTED.*

---

[26] JUDGMENT

Filed Oct. 9, 1973

United States District Court
Eastern District of Louisiana

Nancy Dukes d/b/a Louisiana Concessions

versus

Civil Action
No. 72-2042
Section "I"

The City of New Orleans and
The Honorable Moon Landrieu

The Court previously having granted the motion of defendants, The City of New Orleans, and The Honorable Moon Landrieu, for Summary Judgment; accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, The City of New Orleans, and The Honorable Moon Landrieu, and against plaintiffs, Nancy Dukes d/b/a Louisiana Concessions, dismissing said plaintiffs' suit, with costs.

Dated at New Orleans, Louisiana, this 9th day of October, 1973.

/s/ BENJAMIN W. REISCH
BENJAMIN W. REISCH,
CLERK

APPROVED AS TO FORM:
/s/ JACK M. GORDON
UNITED STATES DISTRICT
JUDGE
Okla Jones, II, Esq.
Joel P. Loeffelholz, Esq.

[27] NOTICE OF APPEAL

Filed: Oct. 29, 1973

United States District Court
Eastern District of Louisiana
New Orleans Division

Nancy Dukes d/b/a
Louisiana Concessions,

Plaintiff

versus

Civil Action
No. 72-2042
Section "I"

The City of New Orleans, and
The Honorable Moon Landrieu

Defendants

Notice is hereby given that Nancy Dukes, Plaintiff-Appellant in the above named action, hereby appeals to the United States Court of Appeals for the Fifth Circuit, from the order denying plaintiff relief from arbitrary, unreasonable, and discriminatory denial to operate her business of selling foodstuffs in the Vieux Carré which was entered in this action on the 3rd day of October 1973 pursuant to joint summary judgment motion by both parties.

/s/ OKLA JONES II
Okla Jones II
ACLU of Louisiana
606 Common Street
New Orleans, LA 70130

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Telephone: 522-0617
Attorney for Appellant

/s/ JOSEPH NEVES MARCAL, III,
JOSEPH NEVES MARCAL, III,
T.A.
General Counsel
ACLU of Louisiana
518 South Rampart Street
New Orleans, Louisiana 70113
Phone: 581 7331
NOTE: ABOVE COUNSEL TO RECEIVE ALL NOTICES — TRIAL ATTORNEY HANDLES THIS APPEAL

---

[28] BOND FOR COSTS

(Number and Title Omitted)

Filed: Oct. 29, 1973

KNOW ALL MEN BY THESE PRESENTS, that, whereas the undersigned and herein bound Jack P. Jackson, and Dayle Janss have been required by the Eastern District Court in and for the Parish of Orleans requiring them to give security for costs herein in the sum of Two Hundred and Fifty Dollars ($250.00);

We, the undersigned principal and surety, do by these presents firmly bind ourselves to be responsible for all costs for which Nancy Dukes, Plaintiff, may be cast in these proceedings, and for payment of which we,

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JACK P. JACKSON, as Principal
and
DAYLE JANSS, as Surety,

both residents of the Parish of Orleans, are by these presents, held and firmly bound unto Benjamin W. Wreisch, Clerk of Court of the Eastern District Court for the Parish of Orleans, and his successor in office in the full sum of Two Hundred and Fifty Dollars ($250.00), lawful money of the United States of America.

New Orleans, Louisiana, October 26, 1973.

/s/ JACK P. JACKSON
PRINCIPAL
/s/ DAYLE JANSS
SURETY

(Affidavits of Sureties Omitted in Printing)

---

[29] MOTION TO BE RECOGNIZED
AS COUNSEL OF RECORD — ON APPEAL

(Number and Title Omitted)

Filed: Oct. 30, 1973

Now comes Joseph Neves Marcal, III, general counsel for the American Civil Liberties Union for Louisiana; and on further suggesting to the court he is

desirous of being placed as attorney of record in the above matter; and on further suggesting to the court that he will be handling the appeal of the above matter;

IT IS ORDERED that Joseph Neves Marcal, III, Esquire, be and the same is hereby placed upon the record in the above matter for the above cited reasons.

New Orleans, Louisiana, this 30 day of October, 1973.

/s/ JACK M. GORDON
JUDGE

Respectfully Submitted by:
/s/ JOSEPH NEVES MARCAL, III
JOSEPH NEVES MARCAL, III
518 So. Rampart Street
New Orleans, Louisiana 70113
Phone: 581-7331

(Certificate of Service Omitted in Printing)

(Clerk's Certificate of Record to Fifth Circuit Omitted in Printing.)

[30] JUDGMENT

Filed: Oct. 22, 1974

United States Court of Appeals
For the Fifth Circuit

October Term, 1973

No. 73-3979
Summary Calendar

D. C. Docket No. CA-72-2042 "I"

Nancy Dukes d/b/a Louisiana Concessions,
Plaintiff-Appellant,

versus

The City of New Orleans and
Honorable Moon Landrieu,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

Before WISDOM, GOLDBERG and GEE, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court for further proceedings consistent with the opinion of this Court;

It is further ordered that defendants-appellees pay to plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

September 27, 1974

Issued as Mandate: Oct. 2, 1974

[30] UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

OFFICE OF THE CLERK
October 21, 1974

Edward W. Wadsworth
Clerk

Room 408-400 Royal St.
New Orleans, La. 70130

Mr. Benjamin W. Reisch, Clerk
U.S. District Court
Room 306, 400 Royal St.
New Orleans, La. 70130

No. 73-3979 — Nancy Dukes d/b/a Louisiana Concessions vs. The City of New Orleans and Honorable Moon Landrieu

(Dist. Ct. No. CA-72-2042)

Dear Sir:

Enclosed is a certified copy of the judgment of this Court in the above case issued as and for the mandate.

Enclosed herewith are the following additional documents:

Copy of the Court's opinion.

Original record on appeal or review. (TO BE RETURNED LATER)

Very truly yours.
EDWARD W. WADSWORTH
Clerk
/s/ [ILLEGIBLE]
Deputy Clerk

enc. (LETTER ONLY)
cc: Mr. Okla Jones, II
Mr. Joseph Neves Marcal, III
Mr. William E. Rittenberg
Mr. George M. Strickler, Jr.
Messrs. Blake G. Arata
Joel P. Loeffelholz

September 27, 1974

Issued as Mandate: Oct. 2, 1974

Supreme Court, U. S.
FILED
JUN 30 1975
MICHAEL RODAK, JR., CLERK

APPENDIX — VOLUME II

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-775

THE CITY OF NEW ORLEANS AND
HONORABLE MOON LANDRIEU,
Appellants,

versus

NANCY DUKES, d/b/a LOUISIANA CONCESSIONS,
Appellee.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JURISDICTIONAL STATEMENT DOCKETED DEC. 21, 1974
JURISDICTION POSTPONED APRIL 14, 1975

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

No. 74-775

THE CITY OF NEW ORLEANS AND
HONORABLE MOON LANDRIEU,
Appellants,

NANCY DUKES d/b/a LOUISIANA CONCESSIONS,
Appellee.

versus

Appeal from the United States Court of Appeal for the Fifth Circuit

---

CHAPTER 46

PERMITS[1]

Section 46-1. Permits required for various callings or occasions; schedule of fees therefor.[2]

Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such per-

---

1 For charter provisions with respect to permits, including a definition of "permit" as there used, see Char., §§ 4-701 and 4-702. For provisions requiring a permit for engaging in various occupations or undertakings dealt with in the other chapters hereof see those chapters.

2 For licenses on other coin operated machines, see Chapter Coin Operated Machines.

mits, however are not valid within the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South, except as provided in Section 46-1.1 of this chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:

(1) A. Definitions:

1. "Mardi Gras Season" is defined as those days and nights commencing eleven (11) days before Mardi Gras and continuing until midnight on Mardi Gras day.

2. "Parade Route" is defined as that area extending one (1) city block in either direction of the streets used by the various parades while the parade is in progress.

3. "Parade Time" is defined as that time commencing two (2) hours before the starting time of a parade and ending two (2) hours after the passing of a parade, but no vendor shall sell or display his wares within the Central Business District which is defined as the area bounded by the River, Esplanade Avenue, Claiborne Avenue and Howard Avenue,

prior to 6:00 p.m. on weekdays, except Mardi Gras Day. On weekends and on Mardi Gras Day when there is more than one parade on any calendar day the vendor must move two (2) hours after the end of the last parade for that calendar day.

4. "Vehicle" is defined as a conveyance which is licensed by the Motor Vehicle Division of the Louisiana State Department of Safety.

B. To sell the following items on city streets along the designated "parade route" during Mardi Gras Season:

1. For a fixed location:
   (a) To Sell
      (1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) $50.00
      (2) Candy, nuts and confections 50.00
      (3) Novelties 50.00

   (b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras Season. This deposit will be forfeited thirty (30) days after Mardi Gras if

taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, may set up their vehicles during "parade time" only.

(e) When the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the City shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance #828, M.C.S., Code of the City of New Orleans, relative to traffic regulations,

especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width. Vendors must sell and display from a "vehicle"; no stands, card tables or the like shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(h) All vendors selling from fixed locations shall have the Mayoralty Permit as provided for in this section publicly displayed at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras Mayoralty Permits shall be issued for vendors from fixed locations on public streets, sidewalks, alleys, parks or squares in the Vieux Carre as defined in Sec-

tion 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(j) All applicants for Mardi Gras Mayoralty Permits to sell food and/or drinks on public or private property must show proof of compliance with all regulations and requirements of the City Board of Health and the Department of Fire, Fire Prevention Bureau before permit can be issued.

2. For Moving Locations:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages)	$25.00
(2) Candy, nuts and confections	50.00
(3) Novelties	50.00

(b) There shall be a $25.00 deposit on each permit to guarantee payment of sales tax as provided in Section 56-41, of Ordinance #828, M.C.S., Code of the City of New Orleans, at the end of the Mardi Gras Season. This deposit will be forfeited 30 days after Mardi Gras, if

taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) All moving vendors must keep moving except when making a sale. No stands, card tables or the like, except hand-carried displays shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(d) For each permit issued one (1) Mardi Gras Mayoralty Badge with a corresponding number shall be purchased by the permittee from the Department of Finance, which badge must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this Chapter.

(e) Mardi Gras Mayoralty Permits for moving locations

shall be invalid in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(f) Mardi Gras Mayoralty Permits for moving locations shall only be valid during "parade time" along designated "parade routes".

(2) To sell novelties on the city streets other than during the Mardi Gras season.

Per sales outlet, for one year ....$ 25.00

(3) To sell candies, nuts and confections on foot or from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.

Per sales outlet, per year .....$ 25.00

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.

Per sales outlet, per year .....$ 25.00

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets

or public places other than during the Mardi Gras season.

Per sales outlet, per year .....$ 25.00

(6) To peddle cooked food, cakes, pies, etc., other than during the Mardi Gras season.

Per sales outlet, per year .....$ 50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places.

Per sales outlet, per year .....$ 25.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles.

Per vehicle, per year .....$ 50.00

(9) To sell home-manufactured articles or home-grown products on foot.

Per year .....$ 25.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square.

Per year .....$ 40.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc., on city streets or public places.

Per year .....$ 15.00

(12) To sell tickets to supper to be held in private homes.

Per event .....$ 15.00

(13) Demonstrations of food products or devices in public places or markets, etc.

Per engagement .....$ 25.00

(14) To distribute samples, canvass on city streets or from house to house.

(a) For crew manager, per year .....$ 25.00
(b) For each crew member, per year.... 15.00

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property.

(a) Per year $100.00
(b) Per month 15.00

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed.

Per year .....$ 25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph.

Per year $250.00

(18) To operate a hand organ in the city streets.

Per year .....$ 15.00

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Section 51:31 to 51:41 of the Revised Statutes of Louisiana.

Per sale .....$ 25.00

(20) Weighing device, etc. on sidewalks or in public places.

Per nickel machine, per year..$ 25.00
Per penny machine, per year.... 15.00

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted.

Per month .....$ 25.00

(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis.

Per year in addition to license .$100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.

Per year $100.00

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:

(a) Admission not more than 75¢ per event .....$ 15.00

(b) Admission more than 75¢ per event 25.00

(25) For amateur and professional prize-fights or boxing and wrestling contests:

(a) Admission not more than 75¢ per event .....$ 15.00

(b) Admission more than 75¢ per event 25.00

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals, bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected.

(a) Admission not more than 75¢ or by invitation

Per event .....$ 15.00

(b) Admission more than 75¢ per event 25.00

(27) For Carnival Balls .....$ 25.00

(28) For philharmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner.

(a) Admission not more than 75¢ or by invitation

Per event .....$ 15.00

(b) Admission more than 75¢ 25.00

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged.

Per year .....$ 50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted.

Per year .....$ 25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner.

Per year $100.00

(32) For dancing when admission is charged:

(a) Admission not more than 75¢ per event ..... $ 15.00

(b) Admission not more than $1.99 per event ..... $ 25.00

(c) Admission $2.00 or more per event. $ 50.00

(33) For a private dance in a public hall.

Per event ..... $ 15.00

(34) To give a rummage sale.

Per event ..... $ 15.00

(35) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof.

Per location, per year $250.00

(36) To sell flowers on the city sidewalks or streets.

Per sales outlet, per year ..... $ 50.00

(37)—(40) Reserved.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 73-3979

NANCY DUKES, d/b/a LOUISIANA CONCESSIONS
Plaintiff-Appellant

versus

CITY OF NEW ORLEANS and
HONORABLE MOON LANDRIEU
Defendants-Appellees

Appeal from the United States District Court for the Eastern District of Louisiana,
Hon. Jack M. Gordon, District Judge, Presiding

BRIEF FOR APPELLEES

(Certificate required by Fifth Circuit Local Rule 13(a), index and authorities omitted in printing.)

* * * *

STATEMENT OF THE CASE

Plaintiff Nancy Dukes brought this action against the City of New Orleans and the Honorable Moon Lan-

drieu alleging a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

Dukes is in the business of selling food, drinks, confections, and novelties from push-carts throughout the City of New Orleans. On January 17, 1972, one of Duke's employees was arrested for violating New Orleans City Ordinance 828 M.C.S. 46-1 and 46-1.1. As a result of this arrest, Dukes initiated a Civil Suit on August 1, 1972, seeking declaratory and injunctive relief against defendants alleging that 46-1 and 46-1.1 were arbitrary, unreasonable and denied her due process and equal protection as guaranteed by the constitution.

As there was no factual dispute to be resolved cross motions for summary judgment were filed by both parties and after argument Judge Gordon granted defendant's motion, denied plaintiff's motion and dismissed the suit.

From that judgment plaintiff has appealed and, after changing lawyers some four times, now apparently claims that all she ever sold or wanted to sell in the Vieux Carre was hot dogs which is in direct contravention of her sworn affidavit filed in support of her motion for summary judgment wherein she swears under oath that her:

> ". . . business consists of selling *drinks, confections* and *novelties* from hand-pushed carts on the public streets, sidewalks and public

> places of the City of New Orleans, including the Vieux Carre . . ."

ARGUMENT

I.

ARE 828 MCS 46-1 AND 46-1.1 UNCONSTITUTIONAL?

Article XIV Section 22 of the Constitution of the State of Louisiana provides, in pertinent part:

> "§22. New Orleans; election of officers; form of government; powers; *home rule charters*
>
> Section 22. The electors of the City of New Orleans and of any political corporation which may be established within the territory now, or which may hereafter be embraced within the corporate limits of said city, shall have the right to choose their public officers, and the form of government of said city.
>
> Subject to the limitations elsewhere contained in this Constitution, *the City of New Orleans is hereby declared to have a home rule charter.*
>
> The City of New Orleans, in addition to the powers expressly conferred upon it by Act 159 or 1912, as amended through the Regular Legislature Session of 1950, shall have the right and authority to adopt and enforce local police, sanitary and similar *regulations* and *to do and perform all of the acts pertaining to its*

local affairs, property and government, which are necessary or proper in the legitimate exercise of its corporate powers and municipal functions."

Chapter 8 of Article V of the Home Rule Charter, entitled "The Vieux Carre Commission" states the powers of the City Council in maintaining the charm, character and economic viability of the Vieux Carre as follows:

"Section 5-803 Enforcement. The Council shall by ordinance or otherwise carry into effect provisions of the Constitution relative to the Vieux Carre Section and shall provide for the enforcement of such provisions by appropriate legal proceedings including resort to injunctive process."

The question now becomes whether or not 828 MCS 46-1 and 46-1.1 are able to withstand plaintiff's attack on their constitutionality as a violation of the "Due Process" and "Equal Protection" clauses of the Fourteenth Amendment to the United States Constitution.

A. *Are All Types Of Discrimination Prevented By The Due Process And Equal Protection Clauses?*

In the well known case of *Oregon v. Mitchell*, 400 U.S. 112, 125, 91 S. Ct. 260, 265 (1970) the United States Supreme Court said of discriminatory laws:

"It cannot be successfully argued that the Fourteenth Amendment was intended to strip

the States of their power, carefully preserved in the original Constitution, to govern themselves. The Fourteenth Amendment was surely not intended to make every discrimination between groups or people a constitutional denial of equal protection."

This is an indication that the Fourteenth Amendment is not to be interpreted as an overall prohibition against any and all types of discriminatory classification or treatment under state law. In *Lehnhouser v. Lake Shore Auto Parts Co.*, 93 S. Ct. 1001 (1973) the Court stated that the:

"Equal protection clause does not mean that a state may not draw lines that treat one class of individuals or entities different from the others, and the test is whether the difference in treatment is an invidious discrimination."

Accord: *League of Academic Women v. Regents of University of California*, 343 F. Supp. 636 (N.D. Cal. 1973) where it was held that:

"It is a far different thing to say that a statute extends a right to one group while denying it to another, than it is to say that a statute provides the same rights to everyone, but does not extend an additional right to any of them . . . The Fourteenth Amendment is not a mandate that every statute must be read to outlaw all forms of discrimination."

These cases represent only a small sample of a long line of jurisprudence upholding differences in statutory classification. They exemplify the fact that society today still provides for and maintains certain forms of necessary discrimination. By these statutory classifications the state is attempting to achieve and maintain the general welfare of its citizens. Society's interests are weighed against the rights of particular individuals. There exists a compelling societal interest in these types of cases that predominates over individual rights and privileges.

This is precisely the issue involved in the case at bar. The interests of the City of New Orleans and the State of Louisiana are vitally affected as regards to that section of the City known as the Vieux Carre. The economic welfare of the City of New Orleans rests on this specially designated area. It is the heart of the City's tourist industry. The incalculable value of this tourist trade prompted the City Council to adopt ordinances to preserve the integrity and to insure the economic viability of the area in a way most conducive to both tourist and citizen alike. This then is the compelling interest of the city which necessitated the enactment of the ordinance in question. No tourist or citizen appreciates peddlers or hawkers interfering with their rights to observe and enjoy the charm and beauty of the New Orleans Vieux Carre. Equal protection does not require that statutes never distinguish between citizens but only that distinctions that are made not be arbitrary or invidious.

In perhaps the landmark case in this area our Supreme Court held:

> "The Court has held that the Fourteenth Amendment permits the States a wide scope of discertion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on ground wholly irrelevant to the State's objective ... *A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." McGowan vs. Maryland,* 366 U.S. 420, 81 S. Ct. 1101 (1961).

We reiterate the fact that the City of New Orleans has a valid compelling interest in protecting and preserving the Vieux Carre both as a valuable and productive tourist attraction as well as a beautiful and natural respite for its citizens to enjoy. This protection and preservation is impeded by the indiscriminate allowance of peddlers and hawkers to confront tourists and citizens. The fact that some peddlers are allowed to peddle and not the plaintiff in this action only tends to demonstrate the City Council's interest in keeping the Vieux Carre the tourist attraction it has always been. The Council sought to allow only those peddlers to remain who have over a long period of time become a *part* of the unique charm and beauty that is characteristic of the Vieux Carre.

In the recent case of *Frontiers v. Richardson,* 411 U.S. 677, 93 S. Ct. 1764 (1973) the Court flatly stated:

> "Under 'traditional' equal protection analysis, a legislative classification must be sustained unless it is 'patently arbitrary' and bears no

rational relationship to a legitimate governmental interest."

Accord: *Jefferson v. Hackney*, 406 U.S. 535, 546, 92 S. Ct. 1724, 1731 (1972); *Richardson v. Belcher*, 404 U.S. 78, 81, 92 S. Ct. 254, 257 (1971); *Fleming v. Nestor*, 363 U.S. 603, 611, 80 S. Ct. 1367, 1372 (1960); *McGowan v. Maryland*, supra; *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S. Ct. 1153, 1161 (1970); *McDonald v. Board of Election Com'rs of Chicago*, 394 U.S. 802, 89 S. Ct. 1404 (1969); *U.S. Department of Agriculture v. Moreno*, 93 S. Ct. 2821 (1973).

In the *McDonald* case cited supra and also in the case of *Reed v. Reed*, 404 U.S. 71, 92 S. Ct. 251 (1971) the Supreme Court again emphasized the fact that it did allow certain discriminatory statutory law:

"The Equal protection clause of the Fourteenth Amendment does not deny to states the power to treat different classes of persons in different ways; the clause does, however, deny the states the power to legislate that different treatment be accorded to persons places by statute into different classes on basis of criteria wholly unrelated to the objective of that statute."

See also: *Eisenstadt v. Baird*, 405 U.S. 438, 92 S. Ct. 1029 (1972).

The court went on in *Reed* to say that:

"In order not to violate the equal protection clause a statutory classification must be

reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

Applying these standards to the issue at bar defendants show that the ordinance in question is not violative of constitutional mandates in that it is patently reasonable and not arbitrary since its exclusion of certain peddlers is based on fair criteria that attempts to maintain the traditional atmosphere of the Vieux Carre which is so vitally necessary for its economic viability and the benefits derived by all citizens of New Orleans therefrom. This clearly is a compelling and valid objective.

See: *Turner v. Fouche*, 396 U.S. 346, 90 S. Ct. 532 (1970) where it was held that:

"The traditional test for denial of equal protection is whether the challenged classification rests on grounds wholly irrelevant to the achievement of valid state objectives."

and: *Police Department of City of Chicago v. Mosley*, 408 U.S. 92, 92 S. Ct. 2286 (1972) in which the court succinctly stated:

"Crucial in equal protection cases is whether there is an appropriate governmental interest suitably furthered by the differential treatment"

It is patently obvious that the economic viability of an area of a city is a valid and compelling purpose that should merit the government's protection through legislation; and, if this area of the city also is vitally important in maintaining the overall economic well-being of the entire city, as is the Vieux Carre, then the interest in closely legislating and protecting the viability of the area is even more compelling. It is only invidious, unnecessary, and totally arbitrary classifications and treatment that the spirit and the letter of the Fourteenth Amendment prohibit. A classification or a statute having some reasonable basis does not offend the Constitution merely because it is not made with mathematical nicety, or the practice results in some inequality. The city should not be caused to lose its entire remedial scheme merely because it failed to cover every peddler at one time. It has been held that:

> "If the classification . . . is shown to have a substantial relationship to a lawful objective and is not void for other reasons, such as overbreadth, it will be upheld . . ." *Boroas v. Village of Belle Terre*, 476 F.2d 806 (2nd Cir. 1973)

Accord: *Godwin v. Patterson*, 363 F. Supp. 238 (M.D. Ala. N.D., 1973).

As the Supreme Court stated in *Norvell v. State of Illinois*, 373 U.S. 420, 83 S. Ct. 1366 (1963):

> "Exact equality is no prerequisite of equal protection of the laws within the meaning of

> the Fourteenth Amendment . . . *The rough accommodations made by government do not violate the equal protection clause unless the lines drawn are hostile and invidious.*"

and in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 93 S. Ct. 1224 (1973):

> "The equal protection clause does not make every minor difference in the application of laws to different groups a violation of our Constitution."

B. *Was The Fourteenth Amendment Plaintiff's Economic Interests?*

The United States Supreme Court in the case of *Weber v. Aetna Casualty and Sur. Co.*, 406 U.S. 164, 92 S. Ct. 1400 (1972) stated that:

> "The essential inquiry . . . [in determining the validity of a state statute under the equal protection clause] . . . is a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?"

Also in the case of *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 89 S. Ct. 1886 (1969), the Supreme Court held:

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind

> the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification."

Accord: *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S. Ct. 5, 10 (1968).

The case at bar necessarily involves a weighing process concerning the interests of the City of New Orleans and those of the plaintiff, Nancy Dukes. As we have previously shown, the ordinance in question is attempting to protect the charm, beauty and tradition that are so vitally necessary for the economic productivity of an entire area of the City as well as that of the City itself. To this end the City has a valid and compelling interest in preventing the enjoyment of this area by tourists and citizens alike from being hindered and lessened by the intervention of innumerable peddlers and hawkers physically soliciting and bothering them so as to lessen their enjoyment of the Vieux Carre. Plaintiff is attempting to protect an alleged right to sell her goods in the Vieux Carre from interference by the City. It is most vehemently argued that while plaintiff is free to sell her wares anywhere else in the entire City, the prevention of their sales in the Vieux Carre does not endanger or invade any fundamental personal right possessed by the Plaintiff. Rather, her right to sell food, soft drinks and confections in the Vieux Carre must be balanced against the City's compelling interest in preserving this area for it's very economic well-being; for if both citizens and tourists alike are bothered to the extent that they cease to frequent the Vieux Carre then the economic stability of the entire city will be in severe jeopardy.

In the case of *Levy v. Louisiana*, 391 U.S. 68, 88 S. Ct. 1509 (1968), the Supreme Court held that:

> "In applying the equal protection clause to social and *economic* legislation, we give great latitude to the legislature in making classifications."

And even more succinctly in *Palmer v. Thompson*, 403 U.S. 217, 91 S. Ct. 1940 (1969) the Court held:

> "The right to equal protection does not promise or guarantee economic or financial equality."

Likewise in the case of *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 93 S. Ct. 1278 (1973) the Court said:

> "... at least where wealth is involved the Equal Protection Clause does not require absolute equality or precisely equal advantages."

In the case of *In v. Hoover*, 447 F.2d 195 (5th Cir. 1971) a Louisiana statute affording preferential treatment of sellers of goods sold in the state over sellers of goods sold outside the state was held not so unreasonable and arbitrary as to be invidiously discriminating and violative of the equal protection clause.

These cases lend credence to the assertion that the spirit of the Fourteenth Amendment is designed to protect the more fundamental and personal rights

from invidious discrimination or interference by state or municipal statutory law.

It is patently obvious that merely because an individual may be at some economic disadvantage this does not automatically make him the victim of an arbitrary, unreasonable and invidious discrimination which is violative of the equal protection clause, particularly where the state demonstrates a necessary and compelling interest necessitating the legislation.

One final point mentioned in *McGowan*, supra, is that the equal protection clause relates to equality between *persons* as such, rather than between areas and therefore territorial uniformity is not a constitutional prerequisite within the ambit of the equal protection clause of the Fourteenth Amendment.

It is respectfully submitted that this is precisely the point in the instant matter for all Dukes is asserting is that she cannot go into the Vieux Carre and sell her food, soft-drinks and confections from push-carts while she *can* ply her trade in the rest of the city. This is no equal protection argument at all particularly in view of *McGowan* and the fact that she is advancing a territorial argument and *not* a personal argument and particularly in view of the fact that in her brief, which counsel frankly finds hard to decipher, she is apparently now seeking only to sell hot dogs and therefore is no longer asserting and has abandoned her argument that there is an inequality between her and the *persons* who validly come under 828 MCS 46-1 and 46-1.1.

CONCLUSION

In summary, what this honorable court is faced with is a lawsuit brought by plaintiff challenging the constitutionality of a municipal ordinance which allows only certain vendors to peddle their goods within a particular area in the City of New Orleans. It is submitted by the defendants that the ordinance in question is constitutional and not violative of the due process and equal protection clauses of the United States Constitution in that it promotes a compelling state and local interest and that it does not invidiously discriminate against the plaintiff in this action. Further defendants maintain that the Fourteenth Amendment is not a blanket prohibition against every type of statutory discrimination, but that it is concerned more with the deprivation of the more basic and fundamental personal, human rights. When the City's interests are compared with those of plaintiff it becomes blatantly obvious that there is a compelling need to uphold the constitutionality of the ordinance in question. Defendants maintain that plaintiff is not deprived of her right to make a living or any other personal right, but only that plaintiff should not be allowed to endanger the economic viability of an important and vital area of the City.

Therefore, in view of all the foregoing, particularly the jurisprudential interpretation of the meaning of due process and equal protection as applied to the facts of this case, it is respectfully submitted that the summary judgment granted by the lower court must be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that a copy of the foregoing brief has been served upon opposing counsel of record by placing the same, properly addressed, in the United States Mail, postage prepaid, this 23rd day of May, 1974.

/s/ JOEL P. LOEFFELHOLZ
JOEL P. LOEFFELHOLZ

Excerpts from Comprehensive Study Plan and Program For The Vieux Carre Under a Demonstration Grant From Department of Housing and Urban Development

Occupation: In concert with the other population changes, the number of people employed in the professions nearly doubled between 1960 and 1965. The number of managers, proprietors, and clerks residing in the Vieux Carre also increased. This growth partially reflects the increased number of small business establishments in the Quarter. The employment increase in these two categories totaled approximately 1,800 employees for the 1960 and 1965 period.

Household Income: Household income has risen sharply since 1950, from a median income of about $1,800 to a 1965 level of $5,200. The number of households with incomes below $2,000 decreased from approximately 2,200 to 825 during the 1950-1965 period, while households with incomes over $10,000 increased from approximately 90 to 700 during the period.

Household Tenure: The majority of households in the Vieux Carre are renters, 82.3 percent. However, the number of owner occupants more than tripled from 1960 to 1965, bringing the number to approximately 860. All of these changes in social characteristics evident in the 1960 to 1965 period can be expected to continue in coming years due to 1) the trend of large families and older persons to leave the Quarter, 2) continued rehabilitation resulting in increased dwelling units, and 3) a high demand for housing by single persons and couples. Forecasts of the housing market in-

dicate a demand for about 2,300 new dwelling units within the Vieux Carre by 1985. If these demands are fully accommodated, a total of approximately 12,900 people, almost 4,100 more than the present population, will be residing in the Quarter in 1985.

The Vieux Carre's population mix has changed from period to period. The coming two decades promise to be another time of great change, in terms of population characteristics and overall size. Public policy should be based on a recognition that a diversity of groups have lived together peacefully in the Vieux Carre for many years and have contributed jointly in creating what is a remarkably rich cultural heritage.

Economic Trends

The Vieux Carre plays a special and important role in the economy of New Orleans. In 1965 approximately 70 percent of the 1.8 million persons visiting New Orleans were influenced by the French Quarter in their decision to come to the city. These visitors spent an estimated $170 million in New Orleans during the course of their stay.

The Quarter's tourist-oriented economy is centered around transient accommodations, eating and drinking establishments, antique shops and other small specialty stores. Economic changes during the last 20 years have contributed to an enlivened Vieux Carre. Strong development pressures for new construction and expanded economic activities foreshadow further change in the character of the Quarter. One index of the likely magnitude of this change is the forecast of

approximately three million visitors coming to New Orleans by 1985.

Because of the strong impact which future growth will have on the Quarter, it is important to understand the Quarter's present economic characteristics and future development potentials. Economic findings are discussed on the following pages in terms of 1) Economic Profile of the Vieux Carre, 2) Real Estate Trends, and 3) Development Potentials.

ECONOMIC PROFILE OF THE VIEUX CARRE

The special character of the Vieux Carre economy is shaped by the diverse elements constituting its market support, the limitations placed on development by the Vieux Carre Ordinance, the economic activities remaining from prior economic eras, and the particular role of the Quarter in the metropolitan economy.

Support for Vieux Carre economic activities comes from local residents, visitors, and the metropolitan market. Historic district controls limit greatly the scope and scale of possible new construction. The port-oriented warehouses, railroad facilities, and industrial and heavy commercial activities, holdovers from a past era, utilize a great deal of Vieux Carre land and have characteristics at variance with the rest of the uses in the Quarter.

The metropolitan economy is strong and diverse. Metropolitan New Orleans, with a population of over one million persons, is one of the major commercial centers in the south. It is a regional center of trade,

services, and finance, and a major seaport ranking second to New York in dollar volume of goods exported. In response to New Orleans' economic growth over the past decade, investors have added substantial amounts of new housing, office and commercial space, as well as transient accommodations to the city's supply.

A significant portion of this growth has occurred in the Vieux Carre.[11] An economic profile of the historic district's economy dramatizes the important and distinct role which the Quarter plays in the metropolitan economy.

TOURISTS AND TRANSIENT ACCOMMODATIONS

The historic district makes its greatest contribution to the economy of the metropolitan area by serving as a principal attraction to persons visiting New Orleans. The Vieux Carre offers an authentic historic environment with specialty shops, restaurants, and lively night-time entertainment. The well-publicized attractions of the Quarter make it the logical location for a great proportion of the city's visitor services.

The concentration of hotel and motel rooms in the Quarter is illustrative of its drawing power. The area currently has an inventory of nearly 2,000 first-class rooms. This total represents 22 percent of the city's total and 35 percent of all hotel and motel accommodations in the Central Business District. Another facility containing 500 rooms was under construction at the writing of this report. Even more significant, however, is the fact that 75 percent of the Vieux Carre inventory has been constructed since 1959.

During the past decade, a substantial amount of retail and residential investment has taken place in the Vieux Carre. But the greatest overall impact has resulted from the construction of new hotels and motels. These new facilities have altered the basic economic character of the Quarter more than any other single factor.

Vieux Carre hotels and motels realized almost $8,000,000 in sales compared to approximately $21,000,000 and $31,000,000 in sales transacted by central business district and city-wide transient accommodations respectively. These figures significantly understate the Vieux Carre's relative position because they predate the construction of 65 rooms now in service in the Quarter.

The impact of the hotels and motels goes far beyond the sales information. Their most important contribution to the Vieux Carre economy is the large supply of potential customers housed in close proximity to the Quarter's retail establishments. Of the estimated 1.8 million persons visiting New Orleans in 1965, about 300,000 stayed in Vieux Carre accommodations. Each of these visitors remained an average of 3½ days. During this time, each person spent approximately $35 for lodging, $65 for meals, $10 for entertainment, and $20 for shopping and miscellaneous items, a total of $100 per person per visit. Consequently, persons staying in Quarter hotels and motels accounted for approximately $30,000,000 in sales, most of which was spent within the Vieux Carre itself.

Before the Vieux Carre hotel and motel building boom most visitors residing in the Central Area stayed in facilities on the upriver side of Canal Street. Although these visitors spent much of their sight-seeing, shopping, and entertainment time in the Vieux Carre, their activities were generally confined to the several blocks nearest Canal Street. The addition of hundreds of hotel and motel rooms in the heart of the Quarter has promoted significant pedestrian traffic in areas which were not previously frequented by many visitors.

For instance, the location of Al Hirt's and Pete Fountain's night clubs in the middle of the Quarter on Bourbon Street is a major departure from the older pattern of cabarets concentrated closer to Canal Street.

An inevitable effect of new hotel and motel construction on the Vieux Carre economy has been the increased value of real estate. Rising real estate values from this construction and other development reflect the increasing potential for new or upgraded uses, especially commercial enterprises, within the Quarter. This has fostered the rehabilitation of many deteriorated properties. Often residential properties have been rehabilitated and converted to tourist uses.

HOUSING

The character of housing in the Vieux Carre has changed very little over the past century. However, the social character of the Quarter's residents has changed with altered economic conditions. Today the population is typically represented by young and middle-aged persons in the middle-income group. Their interest in living in the Quarter is related to the

Quarter's central location and the special character of its environment.

There were 4,848 households living in the Vieux Carre in 1965. The average household size was 1.8 persons, considerably smaller than the city-wide average. Quarter residences occupied approximately 30 percent of the land and 55 percent of the buildings within the historic district. Most residential structures are occupied by more than one household. Residences and shops are frequently located in the same structures.

The type of housing in the Vieux Carre is still varied, but strong market demands in recent years have resulted in the creation of a large number of small, high-priced units. Many residential structures have been rehabilitated to comprise an increased number of units, and some nonresidential buildings have been converted to residential use. The consequence of this rehabilitation activity has often been the displacement of low-income families. The new occupants have typically been young middle-income persons or married couples who can afford the higher costs of living in Quarter dwellings. The trend toward smaller, high-priced town house and apartment units is expected to continue because of the increasing number of persons in the New Orleans area desiring and able to live in the Vieux Carre.

The mixed pattern of land uses in the historic district has not altered the area's status as a highly attractive place for in-town living. The Quarter is close to the city's employment and entertainment centers and many small business establishments exist to cater to the needs of local residents.

OFFICE SPACE

No significant quantity of general occupancy office space is currently available in the historic district for lease to interested tenants. However, there is a substantial amount of government office space in the Custom House and the Louisiana Wild Life and Fisheries Commission Building.

Existing Vieux Carre office space is primarily in small professional and service offices such as finance, insurance, legal, real estate, and personal service offices located on the ground floors of buildings in the commercial sections of the Quarter. In 1965 office space totaled approximately 200,000 square feet.

RETAILING

Retailing is the single most important sector of the historic district's economy. Retail establishments employ nearly 3,400 people and account for over 700,000 square feet of floor space. Of this amount, nearly 85 percent is ground floor area or 30 percent of all ground floor space in the Quarter. In 1963 (the most recent year for which comparable figures are available) over $24 million in retail sales were transacted in the historic district. Recent sales tax data indicate a strong upward trend in sales.

Retail uses are located in one of two significantly different areas. Intensive retail uses and automobile sales and services are located in a block-wide strip along Canal Street and North Rampart Street. These activities seldom extend into the cross streets of the Vieux Carre. The visitor-oriented shops, bars, and restaurants are concentrated in the tourist section along Bourbon, Royal, and Chartres streets from Iberville to Orleans.

The following table indicates the major role which the Quarter plays in several categories of metropolitan retail trade activity.

TABLE 7. *RETAIL SALES, VIEUX CARRE AND OTHER SELECTED AREAS, 1963*

	Vieux Carre	Vieux Carre as Percent of CBD	CBD	New Orleans City	New Orleans SMSA
	($000)		($000)	($000)	($000)
Shoppers Goods					
General Merchandise-Apparel-Furniture	2,654	2	158,766	236,277	302,412
Other Shoppers Goods	5,424	—	*	21,618	24,518
Total Shoppers Goods	8,078	—	*	257,895	326,930
Convenience Goods					
Restaurants, Bars, and Nightclubs	12,805	45	28,455	78,050	103,009
Food and Drug Stores	3,261	30	10,778	204,733	330,352
Total Convenience Goods	16,066	41	39,233	282,783	433,361
SELECTED RETAIL TOTAL	24,144	—	*	540,678	760,291

* Data not available.

Note: Vieux Carre here defined as the legal limits of the historic district. The boundaries of the CBD (Central Business District) are coterminous with those used in the 1963 Census of Business. The Standard Metropolitan Statistical Area (SMSA) includes Orleans, Jefferson and St. Bernard parishes.

Source: New Orleans Bureau of Revenue; U.S. Department of Commerce, 1963 Census of Business.

General Merchandise-Apparel-Furniture: The historic district is not an important location for department stores and other major retail functions which comprise this category. These outlets are largely concentrated on Canal Street. Together the combined complex represents an effective retailing system: Canal Street stores provide for the major shopping needs of the metropolitan population while nearby Quarter shops provide for more specialized shopping.

Other Shoppers Goods: A large number of New Orleans' many antique shops, gift stores, art galleries, and other specialty shops are concentrated in the historic district. This concentration in certain sales categories is documented by 1964 *New Orleans City Directory* information which indicates that 50 of the 76 antique establishments in the city were then located in the historic district as were 29 of the 54 gift shops and all of the art galleries. These establishments are to be found geographically concentrated within the Vieux Carre as well. The tourist section of the Quarter accounts for approximately 90 percent of all "other shoppers-goods" sales transacted within the historic district. "Other shoppers-goods" sales in the Quarter during 1963 represented nearly 25 percent of the city's total.

Restaurants, Bars and Nightclubs: Restaurants, bars, and nightclubs have made the Quarter the entertainment center of the South and one of the most famous in the country. Approximately 45 percent of CBD eating and drinking sales are currently transacted in the Vieux Carre. This proportion amounted to

approximately $13 million in 1963, or almost 55 percent of total retail sales for the Quarter. Of the $13 million total, approximately 63 percent was related to restaurant business.

Market support for the restaurants comes primarily from visitors who account for an estimated two-thirds of all such sales. Metropolitan area residents and Vieux Carre residents account for the remaining 30 and 3 percent respectively. Bars and nightclubs are even more dependent on visitors for their support. Visitors provide 83 percent of their business. Although almost all of the establishments in this sales category are located in the tourist section, several small restaurants and bars serving local residents are to be found elsewhere in the Quarter.

Food and Drug Stores: Food and drug store operations in the Vieux Carre are of limited economic importance. They accounted for nearly 15 percent of all Quarter retailing in 1963. This figure, which comprised about 30 percent of the CBD total, represented, however, only about 1 percent of the city total. The characteristic Vieux Carre drug store or grocery store is of the "streetcorner" type. For reasons of convenience and variety of goods, a number of Vieux Carre residents shop in larger stores outside the Quarter.

INDUSTRIAL ACTIVITIES

A large number and variety of industrial firms are located in the Quarter. The single most important industrial operation is the Jackson Brewing Company which occupies a number of buildings in the upper

Decatur Street area. Other significant operations are the wholesale food distribution complex in the lower Decatur Street area, the warehouses and related activities also in the upper Decatur Street area, and the wharves and railroads along the riverfront.

The 55-acre riverfront area is bounded by Port of New Orleans wharves along the Mississippi River except between St. Peter and Ursuline streets. The wharf section includes about 17 acres and constitutes approximately 5 percent of the total lineal frontage of wharf facilities comprising the Port of New Orleans. A number of railroad tracks belonging to the New Orleans Public Belt, Louisville and Nashville, and Southern Pacific railroads occupy a 24-acre band of land adjacent to the wharves. The Jackson Brewing Company, a New Orleans Public Service Substation, and several warehouse buildings occupy the remainder of the area.

Vieux Carre wholesaling establishments transact millions of dollars of business every year. However, despite the large amount of business conducted by these firms, their total sales activity in 1963 amounted to less than 1 percent of the city's total.

Industrial employment comprises almost one-third of all Vieux Carre employment. Of approximately 3,000 industrial employees in 1964 almost 45 percent were engaged in manufacturing activities. The Jackson Brewing Company employs a majority in this category. There are also many small manufacturing firms which employ relatively few persons. The categories of wholesaling, transportation-communications-

utilities, and warehousing follow manufacturing in amount of employment.

Existing industrial firms are mainly the product of a past economic era. Most establishments have occupied their location for a long period of time and now either do not desire to move or currently find it infeasible.

These establishments represent a scale and intensity of operation which contrast with most other Quarter business. Moreover, they are not dependent on the visitors or residents for their market support. These facts, together with evidence of a gradual reduction in wharf space and railroad use in the Quarter, indicate that industrial activities cannot be considered as remaining in the Vieux Carre over the long-range future.

REAL ESTATE TRENDS

The buying and selling of real property provide a good indication of underlying economic conditions. A healthy business climate is reflected in high rents and increased property values. Rents and property values also measure general development pressures, especially those generated by different uses competing for scarce land.

In recent years commercial activities have been displacing residential uses especially in the tourist section of the Vieux Carre. Pressure for commercial expansion, along with increased interest in the Quarter as a residential area, has caused the value of property to increase, and this has been directly reflected in the prices paid in recent transactions.[12]

Since 1935 property values have steadily increased with an especially sharp gain since 1960. During World War II the value of property in the Vieux Carre was driven up by an increased number of shops rented to persons catering to servicemen and defense workers. Very little of the increased value during this period can be attributed to an actual upgrading of properties. Since 1950, however, the impact of New Orleans' tourist and convention business expansion and the growing demand for housing has made property in the Vieux Carre increasingly more valuable. At the present time buildings in good condition on Royal and Bourbon streets sell for $50,000 to $150,000, depending on their location and size.

The tourist area of the Quarter is dominated by commercial activity. Although there is a relative stability of uses in this area, frequent changes occur in occupancy, especially along Bourbon Street. The value of real estate on Chartres Street is rising more rapidly than in the rest of the tourist area where values are generally "leveling off." Very high land values exist along the river end of Canal Street as well. The pressure for conversion of this land from industrial and low intensity commercial uses to high intensity commercial use is increasing. Along Decatur and North Peters streets interest has been shown in converting old warehouses to apartment structures. Property values in the residential portions of the Quarter are also rising. The increase is especially rapid considering the deteriorated condition of many structures. However, values in residential areas are still the lowest in the Vieux Carre. Potentials for rehabilitation in these areas will further increase real estate prices.

Although assessment patterns in the Quarter are not completely consistent with land use patterns, lowest valuations are generally on residential land while higher valuations are on commercial properties. A study of property assessments (conducted by the Bureau of Governmental Research in 1964) found that assessments in 1960 on real property averaged about 25 percent of market value. A review of available data and interviews with persons involved with local real estate indicate that land and improvements in the historic district are generally under assessed. As a result of the state study, Vieux Carre property might be reassessed at higher rates in the future. The implications of higher assessments and increased taxes for Vieux Carre real estate are significant. At present a relationship exists between the relatively low assessment of Quarter property and the predominance of residential uses and small shops. The continuity of these uses has been helped by the current favorable tax situation. If taxes are increased, the pressure to convert property to more intensive commercial and residential uses will be high.

DEVELOPMENT POTENTIALS

As part of an expanding New Orleans metropolitan economy, the Vieux Carre is assured of continuing growth within the limits imposed upon it by development controls and limited land area.

The metropolitan economy is expected to employ 670,000 workers by the year 2000 and support a population of 2.3 million, over double the present number. Housing will be required for 730,000 households, 410,000 more than in 1965. The expansion of central business district offices will continue following the trend

set by the recent construction of the International Trade Mart and Plaza Tower. A total of almost 13 million square feet of floor space will be needed by the year 2000, an increase of over 7 million square feet above the 1965 standing stock. At the same time retail space is expected to double to keep pace with population demands. The tourist business will be drawing upon the 3.7 million persons who are expected to visit the city annually by the year 2000. These visitors will require a supply of 11,800 first-class CBD hotel rooms and twice that number within the city limits.

By 1985 the economy of the Vieux Carre will probably be even more specialized than it is today. The Quarter will have a key future role as a specialty shopping district, a center for arts and crafts, an entertainment complex, an in-town residential area, and one of America's most important tourist attractions.

The development potential for transient accommodations, housing, retailing, office space, and industry in the historic district has been projected in terms of market forecasts for five-year intervals from 1970 to 2000. The actual extent and distribution of development for each use will depend on public decisions relating to the specific type and sale of development permitted within the historic district.

Transient Accommodations: The French Quarter is a nearly ideal location for transient accommodations. It is expected that by 1985 there will be a demand for over 3,300 hotel and motel rooms in the Vieux Carre, as against 1,550 units existing in 1965. By the year 2000, conservative forecasts indicate the demand will reach

4,900 rooms. This demand will be increased by replacement demand as some existing facilities are closed. The market forecast between 1985 and 2000 represents at least 50 percent of the total CBD demand during the period.

TABLE 8. *TRANSIENT ACCOMMODATIONS FORECAST, VIEUX CARRE, 1965-2000*

Year	Rooms	Period Increase
1965	1,550	—
1970	2,475*	925
1975	2,680	205
1980	3,010	330
1985	3,360	350
2000	4,890	1,530
	TOTAL	3,340

* Includes the Bourbon Orleans (241 rooms completed in 1966), Downtowner (186 rooms completed in 1966) and Chateau Louisiane (500 rooms under construction). No further change in inventory through 1970 is assumed.

Source: Hammer, Greene, Siler Associates.

Housing: Housing market forecasts indicate a demand for about 7,100 housing units in the Quarter by 1985 and about 9,400 units by 2000. The market support for the majority of future housing units will come from non-CBD employed workers in contrast to the existing equal contribution of CBD and non-CBD employed persons. The projected increases over the 1965 housing supply of 4,848 units represent only a small proportion of the total number of units expected to be built throughout the metropolitan area.

TABLE 9. *HOUSING MARKET FORECAST, VIEUX CARRE, 1985-2000*

Year	Housing Units	Period Increase
1965	4,848	—
1970	5,325	477
1975	5,870	545
1980	6,460	590
1985	7,120	660
2000	9,365	2,245
	TOTAL	4,517

Source: Hammer, Greene, Siler Associates.

Retailing: Retail needs in the historic district by 1985 will more than double the existing 730,000 square feet

of space. By 2000 the floor space demand is forecast to increase to 2,600,000 square feet. Most of this demand will be in traditional Vieux Carre retail activities.

TABLE 10. *RETAIL SPACE FORECAST, VIEUX CARRE, 1965-2000*
(Thousands of Square Feet)

	Type of Retail Establishment					
Year	GAF*	Other Shoppers Goods**	Restaurants And Bars	Convenience Goods	Total	Period Increase
1965	78.9	298.8	305.0	50.4	733.1	—
1970	99.5	374.0	378.1	60.1	911.7	178.6
1975	122.0	431.4	476.2	66.2	1,095.8	184.1
1980	146.1	487.5	611.2	72.4	1,317.2	221.4
1985	165.0	607.1	736.3	81.0	1,589.4	272.2
2000	268.3	956.9	1,253.5	114.3	2,593.0	1,003.6
					Total	1,859.9

* General Merchandise, Apparel, Furniture

** Antique Shops, Gift Shops, Specialty Shops

Source: Hammer, Greene, Siler Associates

Goals and Policies

This part of the report presents the recommended Plan for the Vieux Carre and a program of action to implement the proposals contained in the Plan. The Plan consists of interrelated long-range intermediate, and short-range components, so that proposals for more immediate action can be understood within the framework of long-range goals for the preservation of the historic district.

Proposed Long-Range Goals

The long-range goals for the Vieux Carre can be stated as follows:

1. Preserve the Vieux Carre as a historic district of national significance.

2. Guide change to insure the historical continuity of the Vieux Carre's environmental unity, its tout ensemble.

3. Improve the quality of the Vieux Carre's environment by eliminating incompatible and undesirable uses and structures, providing needed amenities and services, and strengthening incentives and controls to improve design standards for new construction and for the rehabilitation of existing buildings.

4. Realize the Vieux Carre's physical, social, and economic potential as an important tourist center, a resource for the people of the metropolitan

area, a desirable in-town residential district, a focal area for the arts and crafts, a major shopping and entertainment complex, and a vital part of the city's economic and tax base.

5. Provide needed facilities and services to support and enhance the functioning of the historic district for serving visitors, residents, and workers.

6. Provide facilities to improve traffic circulation, transit service, and automobile storage within the historic district consistent with proper environmental standards.

Proposed Policies

To achieve these long-range goals for the Vieux Carre, a statement of policies is needed to guide everyday decisions by a variety of public agencies concerned with the preservation and improvement of the historic district. Agreement on basic policies can serve to coordinate these daily decisions in terms of long-range goals and assist private individuals in making better investment decisions.

PRESERVATION POLICIES

1. Preservation should encompass both the physical and functional elements of the Vieux Carre that contribute to its identity and environmental unity.

2. Public action should be especially directed at retaining and strengthening the Quarter's diversity and authenticity.

3. The Vieux Carre should be continued as a living, functioning community, not a museum complex.

4. The quality of rehabilitation-restoration work in the Vieux Carre should be improved through positive programs of financial and technical assistance as well as the application of such negative controls as zoning and building regulations.

5. The maintenance and repair of buildings of architectural and historic significance should be assured by public action where necessary.

6. Individual structures should be continued in uses that are compatible with their architectural character.

7. Changes in density resulting from rehabilitation should be carefully controlled.

8. Systematic code enforcement should be carried out within the Quarter to upgrade existing building conditions and prevent demolition by neglect.

DEVELOPMENT POLICIES

1. Development should be channelled to remove obsolete buildings and renew declining subareas within the Quarter, and should be diverted away from the historic core where older structures are concentrated.

2. New buildings should be carefully related to existing structures in terms of height, material, color, form, and site plan and should honestly express present-day requirements.

3. New construction should be consistent in design and location with the existing historic context and architectural setting.

4. Physical development should be planned to delineate more strongly the physical limits of the Vieux Carre with the Mississippi reestablished as the natural physical boundary of the Quarter.

5. The pattern of development within the Vieux Carre and centers of activity adjoining the Quarter, especially the International Trade Mart, the . . .

* * * *

An increasing number of cities in the United States have enacted laws establishing historic districts like the Vieux Carre. The historic district, as a device, is a key tool in the preservation kit.

The provisions of historic district legislation are generally similar to those of the New Orleans' Vieux Carre Ordinance, passed in 1937. A geographic area containing a concentration of historic structures is specifically defined and a Historic District Commission similar to the Vieux Carre Commission is established to review all permit applications for new con-

struction, reconstruction, alteration, removal, or demolition of buildings within the historic district. In short, regulatory objectives can be stated as follows:

> *Historic district architectural controls aim at preserving appearance without change in ownership or use; where the setting is important as well as the buildings, or the relationship to each other of a sufficient number of historic buildings creates a whole that is greater than the sum of its parts . . .*

External architectural features are subject to review by the Vieux Carre Commission, considering such factors as "the appearance, color, texture of materials and architectural design of the exterior." Unlike New Orleans, however, many cities incorporate architectural control provisions directly within the city's existing zoning ordinance.

While New Orleans passed the first ordinance for preserving a historic district in 1924, it was never enforced. Charleston, South Carolina, is considered the first city in the nation to enforce such an ordinance (enacted in 1931). More recently, Providence, Rhode Island, adopted a historic preservation ordinance based on the work of the College Hill Demonstration Grant Study completed in 1959. Other cities with historic district laws include Albuquèrque, New Mexico; Alexandria, Virginia; Annapolis, Maryland; Boston, Massachusetts; Columbia, South Carolina; Dover, Delaware; Lexington, Kentucky; Mobile, Alabama; Portland, Oregon; Richmond, Virginia; Sacramento, California; San Antonio, Texas; Santa

Barbara, California; Santa Fe, New Mexico; Schenectady, New York; Springfield, Illinois; Williamsburg, Virginia; Winston-Salem, North Carolina; and Washington, D.C.

Preservation: Purposes and Problems

The purpose for creating a historic district may be bricks-and-mortar — to preserve architecture — or dollars-and-cents — to increase a historic district's tourist appeal — but primarily preservation should be thought of as having a flesh-and-blood social purpose, to enrich and give meaning to the daily life of the people of a community.

Americans have been called a future-oriented people. But our search for the new, propelled by science and technology, is increasingly pervaded by doubts about many of the results of that search. The environment of our cities appears more stereotyped and monotonous as everyday life becomes more mechanized. Historic preservation is certainly relevant to the needs of a future-oriented society, as is any effort that can increase the interest and diversity of the cityscape and add to our pleasure and understanding.

As a nation we have been frequently careless with our considerable architectural, artistic, and historic heritage. Four main reasons have been suggested for this:

1. *Insufficient awareness of the importance of this heritage — especially by those in decision-making positions.*

2. *The difficulty of identifying the valuable things and the absence of criteria for determining their relative importance.*

3. *Present design approaches and methods which do not take the trouble to retain important elements, and generally do not provide motivation to do so.*

4. *The lack of a method for considering the value of excluding forms to local people, and of mechanisms for making policy decisions about them on the local level.*

A systematic approach and method of analysis is clearly needed for undertaking preservation planning in any historic district.

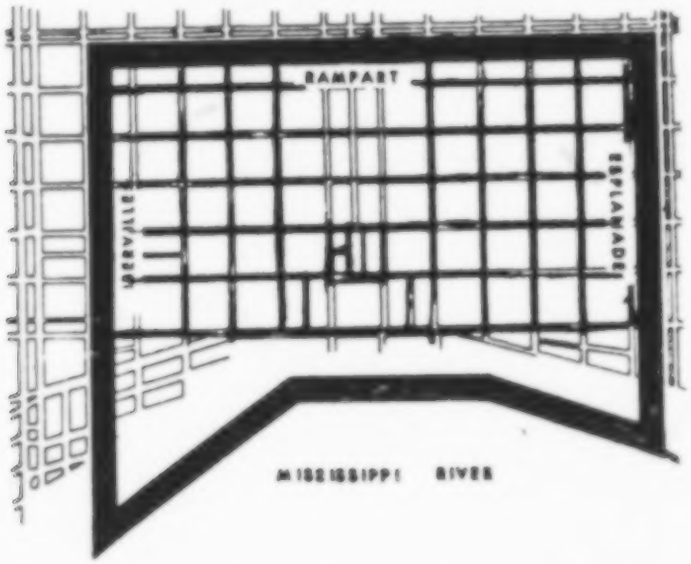


Figure 2: Legal boundary of the Vieux Carre

Vieux Carre Approach and Method

It has been widely recognized that the genius of the Vieux Carre is to be found in its environmental unity and that preservation efforts should be directed at the sum total effect, buildings plus environment.

The Supreme Court of Louisiana adopted the important "tout ensemble" rule in holding that the Vieux Carre Ordinance applied to all structures in the historic district irrespective of an individual building's own historic or architectural value:

> *And there is nothing arbitrary or discriminating in forbidding the proprietor of a modern building, as well as the proprietor of one of the ancient landmarks, in the Vieux Carre to display an unusually large sign upon his premises. The purpose of the ordinance is not only to preserve the old buildings themselves, but to preserve the antiquity of the whole French and Spanish quarter, the tout ensemble, so to speak, by defending the relic against iconoclasm or vandalism. Preventing or prohibiting eyesores in such a locality is within the police power and within the scope of this municipal ordinance. The preservation of the Vieux Carre as it was originally is a benefit to the inhabitants of New Orleans generally, not only for the sentimental value of this show place but for its commercial value as well, because it attracts tourists and conventions to the city, and is in fact a justification for the slogan, America's most interesting City.*

Thus, the court provided legal sanction for undertaking preservation in the Vieux Carre so as to maintain the historic district's environmental unity against harmful change. The whole has been clearly recognized as greater than the sum of its parts.

The identity of the Quarter is synonymous with this concept of the tout ensemble. The police power is authorized to protect those elements of the whole that contribute to the area's physical identity and to prohibit elements that are deleterious. Since land uses are already subject to police power regulation under zoning, functional (land use) components must also be incorporated in an operational definition of the tout ensemble. Such a definition is needed in making everyday decisions about the conservation, improvement, or replacement of individual buildings and uses within the historic district.

Though harmful change must be avoided, the necessity of change, even in a historic district, should be understood and accepted. Change acts on the tout ensemble in a multitude of ways, subtle and otherwise, and the product of this interaction over time may or may not create historical continuity. Public action in the Vieux Carre can be viewed as an attempt to guide change in order to preserve the tout ensemble by insuring that its historical continuity is not broken.

The Vieux Carre is the present product of this kind of interaction extending over two and a half centuries. Architecturally, no single style predominates. Rather the Quarter is a kaleidoscope of styles and periods expressing its highly diverse cultural evolution. The

Quarter's evolution is reflected, as well, in its mix of activities and social groups.

In order to reconcile preservation values with the requirements for necessary and compatible change an accommodation must be made between the two. The following discussion outlines the approach and method used in this study for defining the components of the Vieux Carre's tout ensemble, dimensioning the parameters of change, and, finally, formulating a means to promote through historical continuity an orderly and effective adjustment between them.

Components of the Tout Ensemble

The physical and functional components of the tout ensemble can be defined as follows:

PHYSICAL COMPONENTS:
They include both man-made elements and natural features:

- Single man-made objects including buildings, street furniture (street lights, hitching posts, etc.) and other artifacts.

- Combinations of architectural features including street facades, other groups and masses of structures, and boundary forms (levees, embankments, etc.)

- Open spaces (squares, courtyards, etc.) and landscape features together with the natural features of topography and water.

- Landmarks and other points of visual dominance, viewpoints, and vistas.

These above components contribute mainly to the visual quality of the tout ensemble. In addition, another set of physical elements in the environment that evoke mental associations when encountered should be added. As Jacobs and Jones have written, "*The power of various objects contained in the city to call to mind both past and present associations is to a large extent responsible for our image of the city.*" This set of components includes:

- **Historic** places associated with past events or important personalities and groups and physical elements having present associations — points of social activity (institutions, churches, museums, etc.) — that do not at this time necessarily have historic significance.

A final set of tout ensemble components can also be identified:

- Buildings of architectural and historic significance.

Field surveys were conducted as part of the Demonstration Study to inventory each of these specific physical components of the tout ensemble.

FUNCTIONAL COMPONENTS:
The land use of each parcel of property in the Quarter was also recorded by field survey. Information was mapped to analyze separately ground-level use and

the predominant use of each parcel. Information was supplied by the City Planning Commission for three widely separated years — 1929, 1949, and 1965. The use of nonresidential floor space was also tabulated for 1965. Characteristic, long-term land use patterns such as the "fine-grained" intermixture of activities — particularly the mixture of commercial and residential uses — were examined in this manner.

The use of each building in the Quarter was then studied to determine its compatibility with its environmental surroundings. Incompatible functions were thereby defined on an individual parcel basis. In this way the functional components of the tout ensemble were evaluated.

Parameters of Change

A range of studies concerned with physical, social, and economic conditions, transportation, and development potentials was completed to determine the broad parameters of change affecting the Vieux Carre.

Studies were supplemented by interviews with leaders representing various public and private interest groups concerned with the future of the Quarter. Next, the results of this research were analyzed to determine the relative importance of various forms of change either currently operating or expected to influence the Vieux Carre's physical, social, and economic character during the next several decades.

Pressures for change were found to have both internal and external origins. The more important factors gen-

erating recent change show strong evidence of affecting the tout ensemble for a considerable future period. The chief factors identified were 1) the continued growth of tourism in the Quarter, 2) the area's increasing popularity for upper-income housing, 3) the mounting requirements of the automobile, and 4) the expansion needs of the adjoining Central Business District.

It was also concluded that change can be expected as a result of future public and private efforts to eliminate uses and structures that add little or nothing to the Quarter's identity or are actually harmful to the tout ensemble. The elimination of an undesirable use or structure, in effect, "kills two birds with one stone" by ridding the Quarter of a nuisance and, at the same time, yielding space for needed new facilities.

The type, amount, and locational pattern of expected change were investigated block by block. Physical change in a built-up area like the Vieux Carre takes place through either new construction, rehabilitation and restoration of existing buildings, or their deterioration and demolition. New construction includes, as well as buildings, various kinds of public improvements, such as streets and expressways.

Recent economic and social change in the Quarter has resulted in changing patterns of land use, the economic and functional obsolescence of certain activities, and shifts in the type and location of population groups. In a number of instances the uncontrolled extension of current trends presents serious, long-range consequences to the Vieux Carre.

Preservation planning must be concerned with the quality as well as type and quantity of change. Authenticity, above all, distinguishes a genuine historic district from a "true-to-life" simulation. Because they are subtler, ersatz restorations and pseudo-historic reconstruction pose, perhaps, the most critical threat to the preservation of an area like the Vieux Carre. The catalogue of recent change in the Vieux Carre includes many examples of such insensitive "improvements" made in the name of history.

Guiding Historical Continuity

In every historic district decisions about change must be based on some conception of history and historical continuity. The approach applied in the Vieux Carre regards history as a continuous and irreversible process. All events are interconnected: The past creates the present which, in turn, shapes the future. Because contemporary identity can best be understood as the product of historical continuity, the purpose of preservation planning can be viewed as channelling change to assure the extension of a past continuity into the future.

* * * *

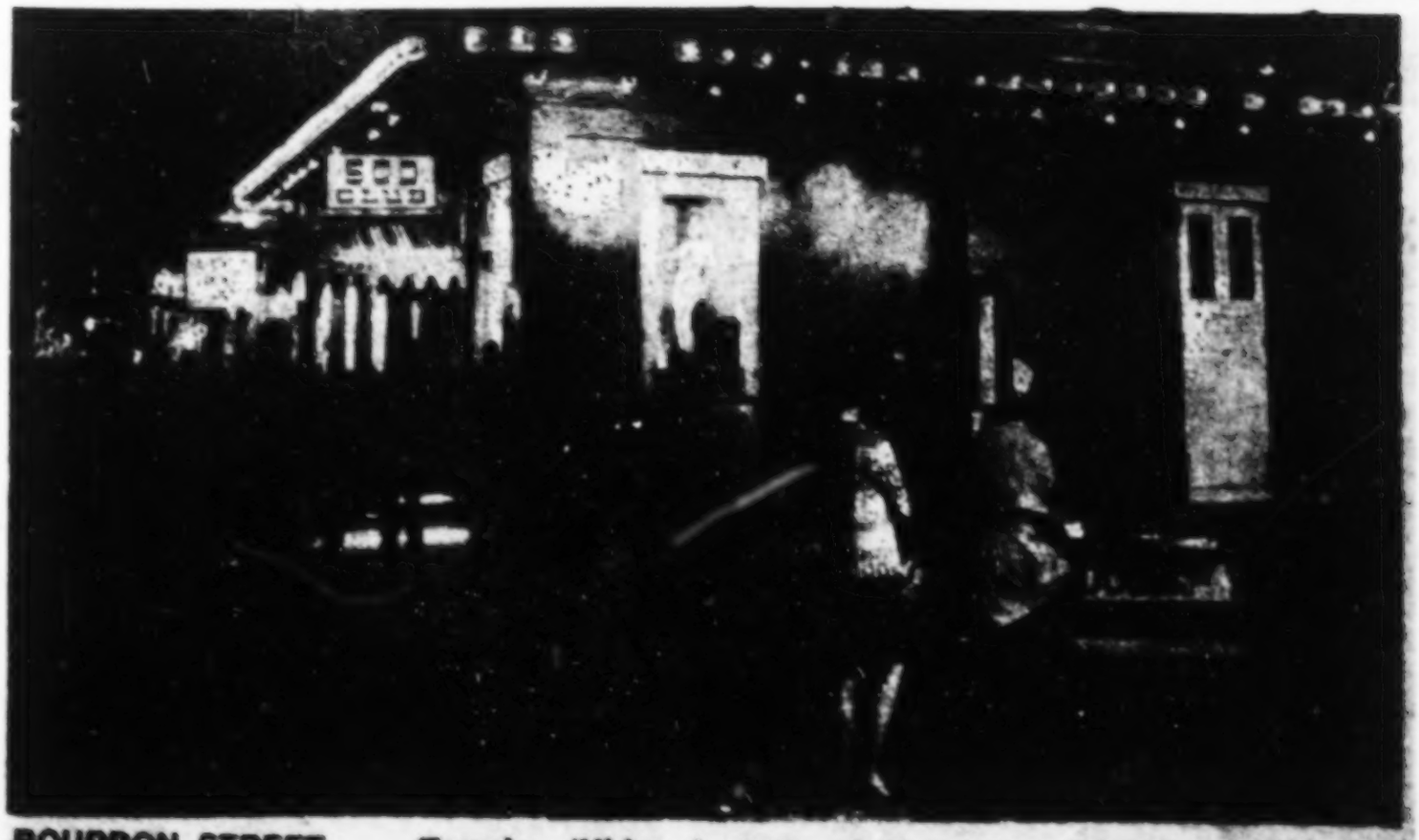
BOURBON STREET BEAT

Live entertainment like this may be seen nightly on world famous Bourbon Street in the Historic Old French Quarter of New Orleans.

BOURBON STREET — NEW ORLEANS

Looking down the famous Bourbon Street where tourists go slumming to see gay, daring and risque entertainment and to listen to the music in the home of Dixieland Jazz.

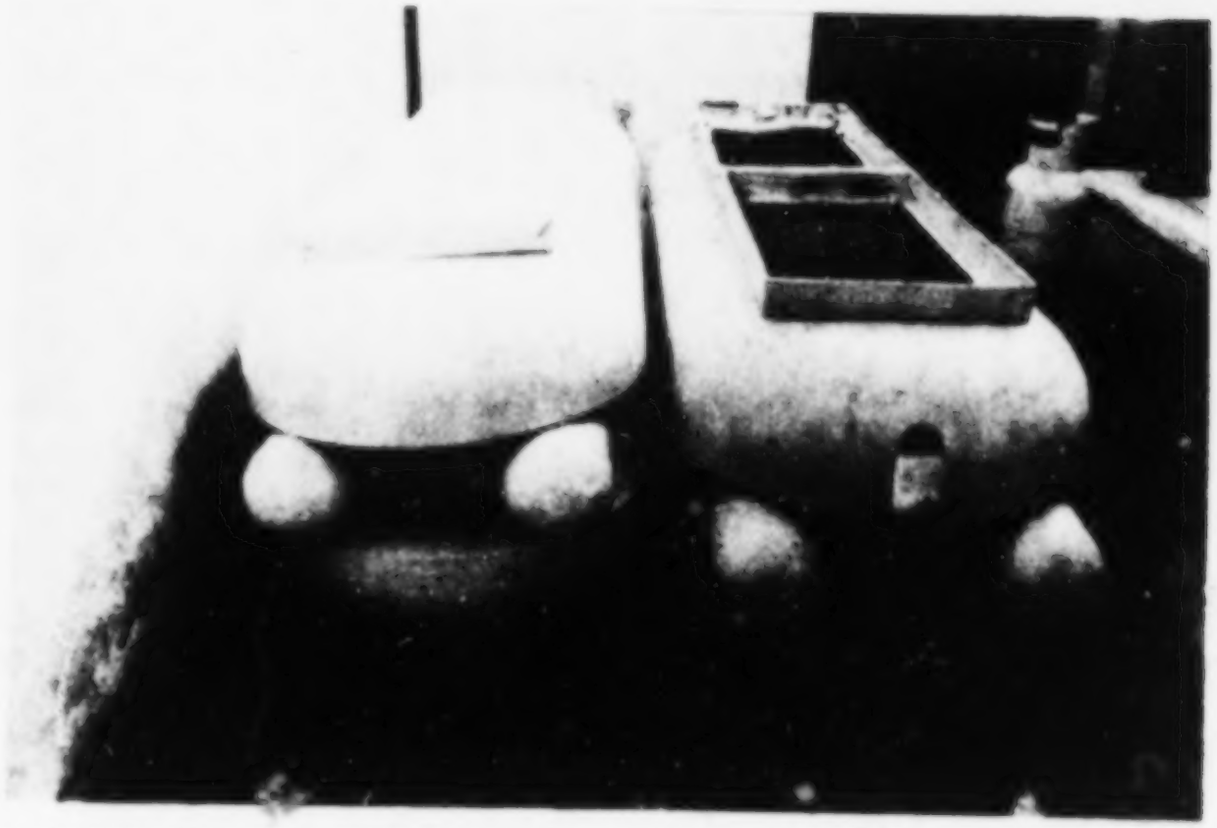
66



BOURBON STREET . . . Teeming 'Midway' of New Orleans' Vieux Carre and birthplace of the jazz revival.

Carnival Eats: A Guide To Cheap Food

67



Lucky Dog pushcarts, waiting to be painted. Strange.

Photo by D. Eric Bookhardt

Cheap restaurants are a liability — especially for those who haven't been in town long — because few of them have reputations that precede them, and so there's no way to get the poop on whether they're merely cheap or cheap *and* good.

The restaurants below represent a wide cross-section of what is both fairly priced and good to eat, and all within a fairly wide geographical range. These places serve a few items no tourist (or self-respecting local) should deny themselves — Lucullan delights like the Hummingbird's red beans and rice, Huerstel's stuffed artichokes, Sidney's potato salad and stuffed crab, Uglesich's trout plate. Read on about where to find them:

Acy's Pool Hall — 1925 Sophie Wright Place, 523-8265. Acy's is an Irish Channel-Coliseum Square favorite (great '40's jukebox speakers with musical notes jumping around on them, a massive dark-stain bar, cavernous, classic pool-hall space); it has sandwiches only. The roastbeef sandwich is famous and ample, but not up to some others around town. Many people like Acy's muffuletta, which is served hot (an infuriation to muffuletta purists) and, to our tastes, scrimps on the olive salad. The piece de resistance is the meat-ball po-boy, which is delicious; wash it down with a Red Drink.

Buster Holmes — 721 Burgundy, 523-8402. Another tradition — at least with street-people; around Mardi Gras, Buster's is inundated by spare-changers, and their presence can make a meal there a teeth-grinder. In the front room, there's a bar and a few tables; in the

kitchen, a counter from which you can peep over your backbone or smoke sausage and watch the help have their spats and bouts and collisions; Leonora Carrington also advises us that Buster's has the best-looking dish-washer in the city; not as cheap as you might expect, you can usually get tanked up at Buster's for under two dollars. Buster is renowned for its red beans, the sausages hot and smoked, shrimp stew, potato salad, roast beef, and delectable fried oysters.

Casamento's Restaurant — 4330 Magazine Street, 895-9761. Sparkling tile covers the floor and walls here (reason is allegedly, according to rumor, because the senior Mr. Casamento is a microphobe); the specialty is seafood, reasonably but not cheaply priced; the frying is miraculously light (a plate of nine spectacular fried shrimp for $3, the huge oyster loaf on hot pan-bread, soft-shell crabs — when they have them — that are wonders), the raw oysters and oyster stew are terrific, and they have bottled beer. Long lines at lunch and on Friday nights.

The Deli — 1534 Melpomene, 522-5751. A hole in the wall, sort of, very close to parade routes. Great pizza with thick crust running about $2.50 or $3 for a small one; also excellent delicatessen meats — the jumbo salami sandwich ($1.85) is one of the best of the bunch.

Dagwood's Po-Boy Sandwich Shop — 4641 South Carrollton, 488-9111. A good place to snack while you're waiting for the Krewe of Mid-City to get going (provided you go to Mid-City to see it); good, ample sandwiches, about a dollar and a half apiece, cooked in microwave ovens. One of the best is the Elmer Special (knockwurst, Swiss cheese, sauerkraut; $1.55) — all

the sandwiches here are named after characters in the late Chic Young's comic strip — but alas! there's still no Cora ("Julius, you worm!") Dithers po-boy.

Fun's Chop Suey — 609 Decatur, 525-1648. The place to eat at 4 or 5 a.m. in the French Quarter; Fun's (ex-Fong's, a flash of those halcyon days when La Casa was still next door) has an extensive menu (prices running from about two dollars for various fried rices up to $3.00 for abalone and vegetables) and a somewhat ghoulish clientele. Especially good are the simple things: yet-ca-mein (or ya-ca-mein), a combination of noodles or spaghetti, hard-boiled eggs, shallots and finely chopped meat — a great cure for hangover, must be doused liberally with hot sauce, Worcestershire sauce, pepper. Also abalone soup, fried rices, shrimp and vegetables, beef with broccoli.

Huerstel's Restaurant and Bar — 3708 St. Claude Avenue, 947-9127. Huerstel's is an old Ninth Ward tradition, and one of the half-dozen most comfortable places in town to eat. The coldest beer in town is only a quarter or so for a big iced glass, the gumbo and stuffed artichokes are great — a familiar sight is Mrs. Huerstel herself sitting at one of the tables working over a score of artichokes — and Huerstel's uses real veal cutlets and real hamburger. The cutlets are quite fine, so is the homemade potato salad. Prices range from two to two and a half dollars a plate.

The Hummingbird Restaurant — 804 St. Charles Avenue, 523-8178. The Hummingbird, located in the steppes of the wino district, is a delightfully seedy place, open all night, with extremely good cheap food. For our money, their red beans and rice — about a dollar thirty-five — are as good as anybody's; the chili

and breakfasts are also highly recommended. If you find yourself hungry at 5 a.m. and don't feel like Chinese food, this is The Place. In spite of the fact that some of the patrons need a bath, a shave, a complete overhaul or reclamation, the service is almost courtly and the atmosphere bustlingly pleasant.

Maxcy's Coffee Pot Restaurant — 714 St. Peter, 523-8215. The walls are loaded with inscribed pictures of movie stars; the menu is loaded with goodies; one of the best is the Salad Jayne, which is terrific for $2.50 — a good light lunch or dinner. As befits its name, Maxcy's also has good coffee by the pot or cup, and daily luncheon specials, which are rarely losers, and run around $2 or more. The red bean omelet is recommended among other things.

Sidney's Restaurant — 1429 St. Peter Street, 523-8627. One of the top eating bargains in town — a $1.25 dinner which might include good red beans and rice, terrific veal stew or potato salad, fresh collard or mustard greens, the hottest stuffed crab in town, and excellent roast beef, or smothered veal or pork chops. Sidney's is also open quite late on weekends.

Toney's Spaghetti Tavern — 212 Bourbon, 523-9261. Toney's, like Maxcy's, has walls covered with inscribed photos and mirrors with daily specials chalked up on them. Toney's is so good, so cheap and so accessible that it's usually mobbed, but the service is snappy. Lots of good seafood and sensibly priced Italian specialties — when you ask for a veal cutlet here, as at Huerstel's, you get real veal. Also, before 10 a.m., the best biscuits in town. One of the few places in

town where you can order a stuffed artichoke and specify whether you want it hot or cold; dress codes go into operation around Mardi Gras time.

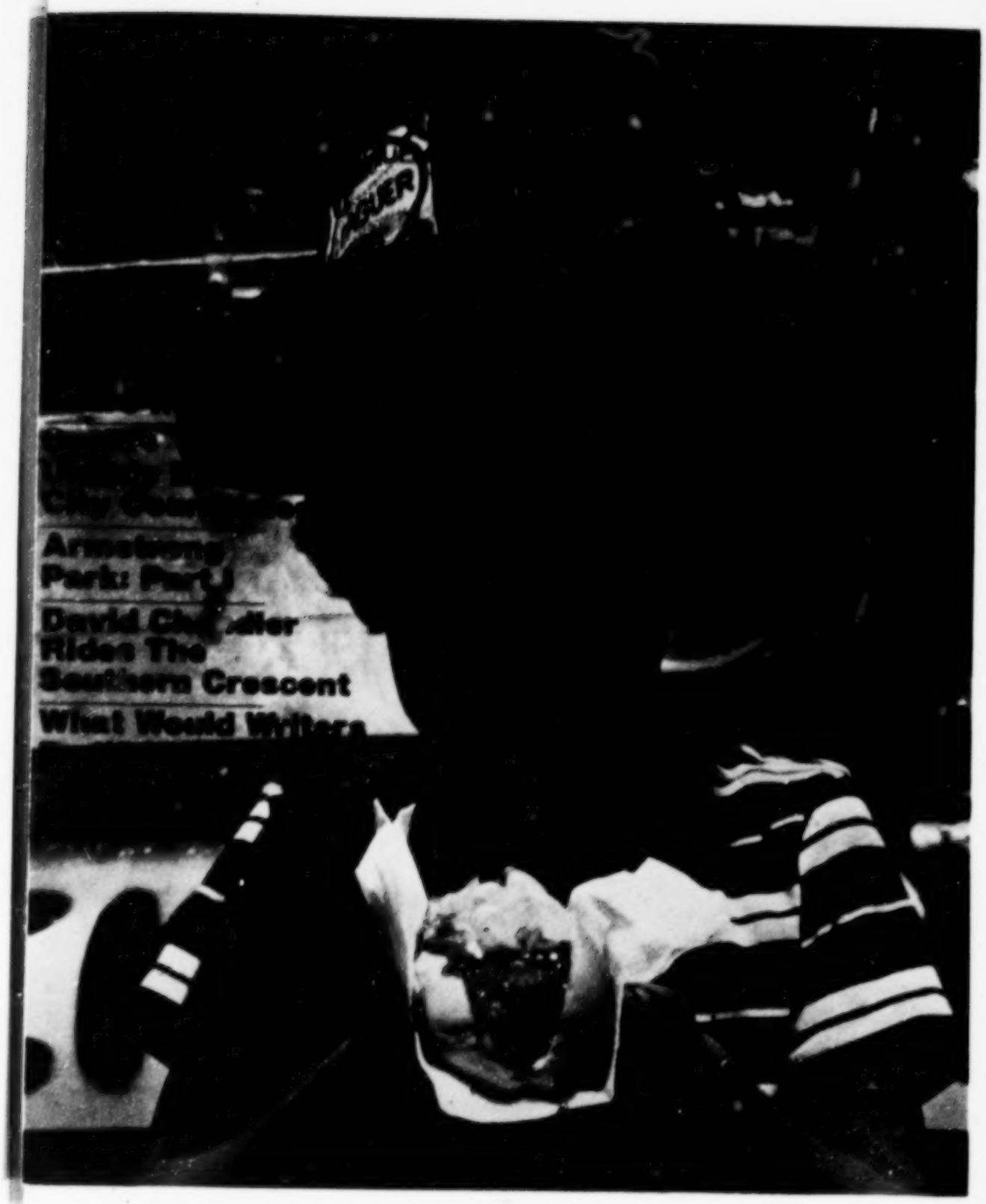
Uglesich's Restaurant and Bar — 1238 Baronne, 523-8571. Terrific seafood — divine oysters (90 cents will buy you a half-dozen raw, a good light lunch), good thirty cent cold beer, fine french fries, fried trout plates (a huge one costs $2.65), good hot sausage sandwiches ($1.55), roast beef, shrimp loaves. Find old-time ambience, and a big hangout for the Brown's Velvet Dairy workers from across the street. Also near the St. Charles parade routes.

Junk Food

There's junk food all over for Mardi Gras. Polish sausages, cotton candy, pop corn, and all that. And, of course, there are those pocket establishments along Bourbon Street that serve junk food all year round. They're fine if you just want something to chew besides the fat as you promenade along the strip.

Archie McConnell's, at 610 Bourbon, is probably the best of these and is open all night. It is positively gaudy compared to the hole-in-the-wall ambience you can expect other places.

Street vendors aren't quite as trustworthy for quality purposes (although discussing the quality of such food is laughable in itself) with the exception of the *Lucky Dog* men. A Lucky Dog at 65 cents (especially good with plenty of onions) is infinitely superior to the vastly more expensive foot-long hot dogs.



INSIDE METRO — NEW ORLEANS — JULY, 1974
(Table of Contents omitted, except for Cover notation printed below)
ON THE COVER: Hot Dog! Summer in the City! Kael Hanks is about to take a bite out of a Lucky Dog, one of the small delights offered to vacationers spending July at home. The photo was made by Kael's father, Wade Hanks, & Avery Crounse.

THE STATES ITEM
SEPTEMBER 27, 1974
FRIDAY
NEW ORLEANS, LOUISIANA

ARTICLE IN RE OF: NANCY DUKES v. CITY OF NEW ORLEANS, et al

Vol. 98—No. 94 Friday, September 27, 1974

Hot dog vendors won't relish ruling

A federal appeals court here today ruled the city cannot favor "a venerable hot dog dealer with the skins of . eight seasons over franks of more recent vintage."

Or, in other words, the U.S. 5th Circuit Court of Appeals held that the grandfather clause of an ordinance which restricts the sale of ho dogs in the French Quarter to vendors of more than eight years experience prior to Jan. 1, 1972, discriminates against vendors of less experience.

Nancy Dukes, who does business as Louisiana Concessions, brought suit against the city and mayor after the council adopted the ordinance, which in effect, limited the sale of hot dogs in the Vieux Carre to Lucky Dogs Inc.

She contended the clause violated her constitutional rights under the 14th Amendment, but U.S. Dist. Judge Jack M. Gordon didn't see it that way and ruled against her. Today the appeals court reversed that decision and sent the question back to Gordon.

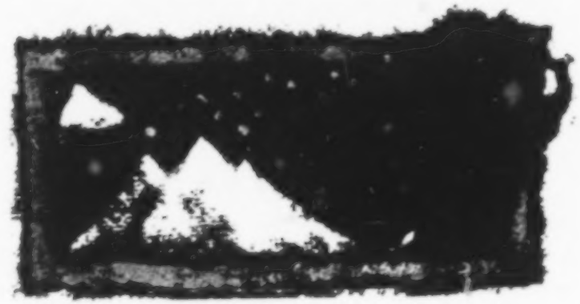
"While we are sympathetic to New Orleans' efforts to conserve the traditional complexion of the Vieux Carre and sensitive to the difficulty of consistently aligning tradition with purely reasonable distinctions, we nevertheless find the Council's rationale insufficient to support the discrimination imposed," the court's ruling said.

The court said there was no suggestion that eight years experience in the pushcart hot dog business is necessary or helpful to better hot dog salesmanship or that it instills in the vendors the kind of appreciation for the conservation of the Quarter's tradition that would move them to refine their methods of operation.

The court emphasized that the ruling does not bar the city from further legitimate attempts to conserve the Vieux Carre's unique resources, such as strict regulation of the location and the appearance of the pushcarts.

Quarter hot dogs good for one . . . and all

Epicurean Specialties of the Vieux Carre



ILLUSTRATED BY MIRIAM SCHOTTLAND

Gumbo:
A savory soup brought from African jungles. Gumbo zhebes is created from carefully washed, fresh greens and thickened with okra. Ingredients include collard, carrots, radishes, escarole, lettuce, onions, spinach, watercress, beet tops, mustard, diced ham and veal, and herbs such as tarragon, chives, dill, allspice, bay leaves, thyme, sage and marjoram. Try this at the elegant Dunbar Restaurant.

Oysters Bienville:
Created about 1930 by French Count Arnaud Cazenave, who had established Arnaud's Restaurant on Bienville Street in 1920, this delicious dish has gathered a legion of faithful followers. The oysters are prepared in the same manner as in Oysters Rockefeller but the sauce is what makes the difference. Browned butter and minced onions are combined with chicken consommé, white wine, cooked shrimp, raw mushrooms and thickened with egg yolks and cream.

Cafe Brulot:
A flaming coffee, usually a festive drink ceremoniously served after dinner. Prepared in a bowl, it contains cloves, sugar, lemon or orange peel, cinnamon and flaming brandy. Hot coffee is poured into the flames and then served with appropriate flourish.

Pigeonneau Sauce Paradis:
On a bed of minced celery, carrots and onions enlivened by Madeira and red wine, a delicately browned squab is served with white grapes and ebony truffles. This delightful dish is a creation of Roy Alciatore.

Beignet:
A feather-light square doughnut or fritter, with or without powdered sugar and without a hole. Usually served with café au lait.

Cafe au Lait:
Strong French coffee mixed with chicory and poured into a cup simultaneously with hot milk.

Oysters Rockefeller:
This superb concoction, an innovation of Jules Alciatore, is undoubtedly Antoine's most famous dish. The succulent oysters are placed in their own deep half shells, baked for six minutes on a bed of rock salt, swathed in a rich butter sauce that includes parsley, onions, spinach, shallots, anise liquid (replaces the outlawed absinthe), thyme, garlic and anchovy paste, and then returned to the oven for an additional five minutes.

Absinthe Suissesse:
More than a hundred years ago this foaming, lime-colored drink was the rage of the South. It has again returned but the outlawed absinthe has been replaced by Herbsaint. Egg whites are combined with cream, anisette, orange-flower water and syrup. The entire brew is vigorously shaken with ice and served in a frosted glass.

Eggs Benedict:
A universal dish but in New Orleans it is something special. Brennan's Restaurant, where breakfast is served from 9 a.m. to midnight, has improved upon the original. Eggs Hussarde are unforgettable. Whereas Eggs Benedict are comprised of English muffins covered with broiled ham capped with a poached egg and covered with hollandaise sauce, Eggs Hussarde add tomato slices and unparalleled Marchande de Vin sauce served on Holland rusk and topped with a lavish serving of Brennan's own rich, yellow hollandaise sauce. Unbelievably delicious.

Hot Dogs:
Hot dogs amidst all this superb cuisine? Yes. For some reason the Vieux Carré hot dog peddler holds a strange fascination, particularly at around midnight. He serves his steaming juicy hot dog on a fresh bun and smothers it with mustard, ketchup, relish and onion. A wonderful way to end the day or to give one strength for the reveling ahead.

Red Beans and Rice:
Traditionally a Monday meal, this simple, tasty dish is a favorite, especially at the small walk-in restaurants, as are po-boy and muffullatta sandwiches.

Saturday, April 19, 1975 The States-Item
New Orleans Page 21

MOVIES

AMARCORD: INSIDE FELLINI'S DREAMLIKE WORLD

THE LAST MICK IN THE CHANNEL, directed and written by Dalt Wonk. With Josephine Sacabo, Dan Dial, Mark Williams and John Craemer.

Last weekend, a locally produced video tape, "The Last Mick In The Channel," written and directed by Dalt Wonk, was screened at the Photo Exchange Gallery. The equipment was primitive -- one of those miniscule Sony televisions that reduced the credits to fine print and unsophisticated audio equipment — but the product itself was by no means amateurish. If the community supports Wonk's project, you'll be able to see it for yourself on TV.

A freelance journalist who has written and performed plays in New York and London, Wonk got the idea for the scenario when he overheard some gossip about a Lucky Dog vendor at a sandwich shop on Bourbon Street. The finished script is about a hot dog dealer (Dan Dial), who after twelve years of loyal service to Lucky Dog (with no pension plans, profit sharing or vacation time), slithers away with ninety dollars. He winds up in the men's department of Maison Blanche, buying a suit to impress his grandchild, who thinks he's a retired Marine Corps captain instead of a street peddler prone to hitting the sauce.

The script involves the interactions of Sal, the owner of the business (Mark Williams); his wife,

Angie (Josephine Sacabo, in an extremely sensitive performance as a young woman with marital troubles), and Sal Sr., a bitter old man dying in the hospital and founder of Lucky Dog (John Craemer).

The cast members, with the exception of Dan Dial, have all had extensive acting experience. Dial, a retired draftsman-turned-Quarter Character who ran for mayor in 1969, does amazingly well. Dalt Wonk met Dial while working as an extra in "Mandingo," and decided he had a superfluous supply of character-color to make up for his inexperience.

The force of fine direction, acting and meticulously planned camera angles (by Julia Nead, Abby Terkuhle and Judy Cooper) make the production kind of like a local version of Frank Capra's "Pocketful of Miracles" — with more emphasis on emotions, motivations and local color, and less on tear-jerking.

There's only one irritating fact about the film — I only got to see roughly twenty minutes of it, since the entire script hasn't been filmed yet. Wonk desperately needs financial support before he can complete the project. So far, local organizations have been extremely cooperative in loaning him equipment and facilities — Ochsner Foundation Hospital and Lucky Dog, just to name a couple, and both Channels 12 and 26 are more than eager to air "Last Mick in the Channel" upon its completion.

Anyone who can be of assistance should call 523-1067 — the city is indeed fortunate to have such an ambitious group of new filmmakers, and to allow their efforts to be stalemated in the idea stage would surely be criminal negligence.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

NO. 74-775

THE CITY OF NEW ORLEANS AND HONORABLE MOON LANDRIEU,
Appellant,

VERSUS

NANCY DUKES, d/b/a LOUISIANA CONCESSIONS,
Appellee.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

NO. 74-775

THE CITY OF NEW ORLEANS AND HONORABLE MOON LANDRIEU,
Appellant,

versus

NANCY DUKES, d/b/a LOUISIANA CONCESSIONS,
Appellee,

Appeal from the United States Court of Appeals for the Fifth Circuit

---

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

MOTION TO DISMISS

The Appellee, Nancy Dukes, d/b/a Louisiana Concessions, moves to dismiss the Appeal to the United States Supreme Court herein as presented in the Jurisdictional Statement on behalf of Appellant for the following reasons:

1.

Though Appellant allegs otherwise, this is not an Appeal from a "final judgment". The Judgement handed down by the United States Court of Appeal for the Fifth Circuit on September 27, 1974, was "tentative" is "incomplete" in the respect that it requires further action by the District Court. This appears from the language of the last two paragraphs of the Fifth Circuit decision, which noted:

> "Finding the ordinance unconstitutional as applied, we reverse the summary judgment for the City entered below. Since the trial court did not find the Ordinance's discrimination unconstitutional, it did not consider whether the "grandfather clause" was severable from the Ordinance's simultaneous general preclusion of push cart hot dog vendors from the Quarter, that is, whether the Ordinance should be read as a total nullity, or whether it should be read to preclude the operation of all of the push cart hot dog vendors in the Vieux Carre. We remand for the District Court to resolve this question and enter judgment accordingly.
>
> "Reversed and remanded for further proceedings consistent with this opinion."

2.

The "grandfather clause" of Chapter 46, § 1,[1] of the Code of the City of New Orleans constitutes an "invidious discrimination" against Appellee. This "invidious discrimination" is twofold. The discrimination emanates from "exceptions" to the general prohibition against issuance of permits within the Vieux Carre area and Central Business District area. The Appellee does not qualify for any of these "exceptions" or "exemptions" as they presently exist. Further, the Appellee cannot under any circumstances qualify for the residency requirements of the "grandfather clause", despite her two year activity.

3.

There are no "compelling State interests" which justify the exclusion of Appellee from selling "foodstuffs" and "hot dogs" in the prohibited areas solely because Appellee has been selling "hot dogs" for two years prior to January of 1972, instead of eight years like Lucky Dogs.

4.

The "Permit Law" as it presently reads is the end result of a deliberate effort to favor Lucky Dogs, Inc., by the City Council of New Orleans as is apparent from a reading of a Legislative History of the "Permit Law". As indicated in photographs made a part of this Motion To Dismiss and Supporting Brief, these Lucky Dog push carts in no way add or preserve the charm and customs of the Vieux Carre. This is a spurious position advanced by the City as an afterthought to justify the enactment of this "invidious discrimination".

5.

The Fifth Circuit Court of Appeals definitively dealt with the questions presented by Appellant-City of New Orleans so as to render those questions now

---

1. Appellee has presented Chapter 46, § 1 in its present form in Appendix "B". Appellee's treatment of the Legislative history of this Ordinance spans a period from 1942 up to and through 1973. This so-called "Permit Law" has its roots in the Commission Council Series Ordinances which are cited herein as CCS # _____. In 1954, the City of New Orleans adopted a new form of government, and began to pass Ordinances under the Mayor Council Series, referred to herein as MCS # ____. With the adoption of the MCS Ordinances, the City adopted the Code of the City of New Orleans whereby it designated that the "Permit Law" appear in certain Chapters of the City Code. At first under the MCS Ordinances, the "Permit Laws" appeared in Chapter 14 of the City Code, and subsequently, as is the case as of the date of this Appeal, the "Permit Law" appears in Chapter 46 of the MCS Ordinances. For purposes of simplification, the Ordinance under attack is referred to throughout this brief as Chapter 46, § 1 & 1.1, and references to the antecedant laws will be designated by CCS Ordinance # _____ or MCS Ordinance # ____, as is appropriate. All of the antecedant laws have been copied in the Appendices herein and made a part hereof.

presented before this Court so unsubstantial as not to need further argument.

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STATEMENT OF THE CASE

The Appellee, Nancy Jules, d/b/a Louisiana Concessions, filed a Civil Rights Action pursuant to 42 USC §1983 & 1985 which was allotted to Honorable Jack M. Gordon, Presiding, United States District Court for the Eastern District of Louisiana. Relief was also sought under 28 USC §2201 & 2202, whereby a declaratory judgment was sought declaring Chapter 46, § 1 of the Code of the City of New Orleans, as amended, unconstitutional as applied to the Appellee. Appellee further alleged that this City Ordinance was "facially unconstitutional" because it "invidiously discriminated" against Appellee in favor of other individuals engaged in similar, if not the same activities. The original Complaint alleged that the City did not have any "compelling State interest" in the enforcement of such a law. Violation of the "due process" and "equal protection" clauses of the Fourteenth Amendment of the United States Constitution were alleged.

Subsequent to the filing of the original Compalint, Appellee was forced to amend same because theCity, through it's Council, amended Chapter 46, § 1 and Chapter 46, § 1.1 of the Code of the City of New Orleans.

The City filed a mere "general denial" to all of the allegations contained in the original Complaint.

Interrogatories were filed by Appellee which were eventually answered by the City after a great deal of effort on the part of Appellee.

The District Court indicated that this matter was to be handled on the basis of "stipulated facts" and corresponding Motions For Summary Judgment. Appellee filed her Motion For Summary Judgment supported by reference to the original Complaint, Affidavits of Appellee and another individual together with the Answers by the City to the Interrogatories. Appellee filed her Statement of Material Facts. The City submitted it's Motion For Summary Judgment supported by a brief Statement of Material Facts.

The District Court denied Appellee's Motion For Summary Judgment, granting the City's Motion by judgment of October 9, 1973, and thereby dismissing Appellee's Complaint.

Appeal was taken to the Fifth Circuit Court of Appeals which reversed the District Court after a thorough treatment of the applicable law and facts. See Appendix "B" of the Appellant's Jurisdictional Statement cited at Jules v. City of New Orleans, 5 Cir. 1974, 501 F.2d. 706.

The City has presented a Jurisdictional Statement to this Court which rests upon the assumption that the Lucky Dog push carts are so "charming" and

"nostalgic" that the City was justified in denying Appellee her livelihood in one of the most lucrative commercial areas in the City of New Orleas where she has conducted her business activities for two years and not eight as the Lucky Dog push carts.

I.

THIS COURT SHOULD NOT ENTERTAIN THIS APPEAL IN THE FORM OF A JURISDICTIONAL STATEMENT FOR THE REASON IT LACKS JURISDICTION PURSUANT TO 28 USC 1254 (2) IN THAT THE DECISION OF THE CIRCUIT COURT WAS NOT "FINAL".

Argument Of Fact And Law

The judgment of the Fifth Circtui Court of Appeals is not a proper subject of what Appellant admits at page 6 of it's brief to be an "appeal" under 28 USC §1254 (2).

Jurisdictional statutes such as the foregoing have been consistently construed "with precision and with fidelity for the terms by which Congress has expressed it's wishes...." Cheng Fan Kwok v. INS, 392 US 206, 212, 88 S.Ct. 1970, 1974, 20 L.Ed.2d 1037 (1968) cited at Palmore v. United States, 41 USC 389, 93 S.Ct. 1670, 1675, 36 L.Ed.2d 342 (1973). This Court has always been prone to accord a rather strict construction of statutes authorizing appeals. Palmore v. United States, supra; Fornaris v. Ridge Tool Co., 400 US 41, 42 n. 191 S.Ct. 156, 157, 27 L.Ed.2d. 174 (1970).

Though this Court in view of the recent amendment to 28 USC §1254 (2) has liberally construed appeals on "jurisdictional questions", allowing them to be construed as Writs of Certiorari (see City of El Paso v. Simmons, 379 US 497, 85 S.Ct. 577 [1965]), this Court still has indicated a distaste for "piecemeal appellate review" before the United States Supreme Court. Goldstein v. Cox, 396 US 471, 90 S.Ct. 671 (1970).

Reference is made to the first paragraph of Appellee's Motion To Dismiss wherein is cited the last two paragraphs of the Fifth Circuit decision which Appellant-City of New Orleans now attacks. A fair reading of this language of the Fifth Circuit indicates the "tentative" and "incomplete" status of this matter at this time. It is not unreasonable to assume that if the District Court considers the "grandfather clause" severable from the "Permit Ordinance" under attack by Appellee, the City may not appeal Naturally, one can also assume that if the District Court finds that the "Permit Ordinance" is a "total nullity", then the City of New Orleans would appeal. It appears that this is not the ordinary remand situation. The weight and impact of the Fifth Circuit opinion, depends on what theDistrict Court does with its mandate. It would be less than candid for the City of New Orleans to suggest that it would not be pleased with the severance of the "grandfather clause" from the

ordinance under attack, leaving the entire remaining scheme of regulation as is. There does not seem to be anything "final" about what the Fifth Circuit instructed the lower court to do. Depending upon what the District Court does, the City may or may not take any further action in regards to this particular law. What obviously is frightening to the City of New Orleans is the possibility of a lower court finding that the entire regulatory scheme of the permit laws is a "total nullity". It is the "potential" of one alternative that undoubtedly concerns the City, not the finality of the Fifth Circuit Judgment of which it complains.

THERE IS NOTHING "CHARMING" OR "NOSTALGIC" ABOUT THE LUCKY DOG PUSH CARTS; AND CERTAINLY, THERE ARE NO "COMPELLING STATE INTERESTS" TO JUSTIFY THE "INVIDIOUS DISCRIMINATION" PRACTICE AGAINST APPELLEE. THIS SCHEME OF DISCRIMINATION, AS IS APPARENT FROM THE LEGISLATIVE HISTORY OF THE "PERMIT LAW", HAD BUT ONE PURPOSE, AND THAT WAS TO FAVOR THE ECONOMIC INTERESTS OF LUCKY DOGS TO THE UNJUSTIFIED DETRIMENT OF APPELLEE

Argument of Fact

It is essential to this Court's consideration of this matter that it be apprised of those "facts" cited by Appellee before the Fifth Circuit Court of Appeals which, to Appellee's knowledge, were never contested.

The facts are as follows: Appellee Nancy Dukes was in the business of selling food, drinks, confections and novelties from "movable push carts", on the public streets, sidewalks, and/or public and private places in downtown New Orleans.

The prime source of her business was the Vieux Carre, particularly during the summer months of May through September, when average weekly sales totaled approximately $385.00 per week. Appellee employed various salesmen on a commission-percentage pay basis. Appellee had all of the permits required by the City of New Orleans up until the last revision of Chapter 46, § 1 of the City Code.

In January of 1972, Appellee's manager, Frank D. Siliker, was arrested for violation of Chapter 46, § 1 of theCode of the City of New Orleans. See Appendix "R". Chapter 46, § 1 had been amended at that time by MCS Ordinance # 4744, passed in December, 1971. At the time of the arrest of Appellee's manager, Chapter 46, § 1 banned vending from "push carts" of all foodstuffs except hot dogs and hot tamales in the Vieux Carre area. (See Appendix "K" for MCS Ordinance 4744). Though Appellee assumed that she came under the "exceptions", as the law read then, her manager was nevertheless arrested for selling "hot dogs". However, the City realized the difficulty it would have in convicting Appellee of violation of Chapter 46, § 1 in view of the then recently enacted "exception" through MCS ORdinance 4744. Thus, the charges were dismissed.

However, in April, 1972, Chapter 46, § 1 was again amended by another Ordinance, to wit: MCS Ordinance # 4822 (See Appendix "M"). It was in this April, 1972 amendment that there first appeared the "grandfather clause" whereby the arbitrary period of "eight or more years" was chosen as the cut-off date for businesses which could obtain a permit in the Vieux Carre. By no small

coincidence, this eight year period happened to be slightly under that peri d of time during which the Lucky Dog push carts had been in operation in the Vieux Carre area. Since the dismissal of the charges against Appellee's manager in January, 1972, Appellee had contented herself with operating her push carts and selling "hot dogs" in the Vieux Carre in competition with the Lucky Dog push carts. However, with the appearance of the "grandfather clause" in the "Permit Law" via the April, 1972 amendment, events turned on the Appellee. Though Appellee could qualify under the "exception", Appellee could not qualify for the eight year residency requirements of the "grandfather clause" brought into play by the April, 1972 Amendment of the "Permit Law".

Appellee had no other recourse but to file a Civil Rights Complaint on August 1, 1972, realizing that the arrest of her manager for alleged violation of the "Permit Law" where no such violation existed and the subsequent enactment of the "grandfather clause" made it clear that the City of New Orleans had no intention of allowing her to operate her hot dog push carts in competition with the favored Lucky Dogs.

Subsequent to Appellee filing her Civil Rights Complaint, the City Council again amended Chapter 46, § 1 per MCS Ordinance # 4957 (See Appendix "N"), passed on August 31, 1972. This precipitated an amendment of Appellee's Complaint. Appellee's Complaint places at issue not only the "exceptions" contained in Chapter 46, § 1, but the "grandfather clause" of same Ordinance which taken individually or together "invidiously discriminate " against Appellee.

A. LEGISLATIVE HISTORY OF CHAPTER 46, § 1 & 1.1:

A consideration of this "Permit Law" is impossible without viewing the legislative history behind same which develops a scheme of discriminatory legislation which can hardly be considered as having a motive of preserving the "charm" and "nostalgia" of the French Quarter. Instead, the legislative history develops an insidious scheme to favor the economic interest of Lucky Dogs over and above the interests of Appellee who until the passage of the "grandfather clause" in April of 1972, was always able to qualify for the necessary permits to do business anywhere in the City, and particularly in the Vieux Carre area.

The present Chapter 46, § 1 of the Code of the City of New Orleans is rooted in CCS Ordinance # 15, 510 passed on February 20, 1942. See Appendix "A". This was apparently the first "Permit Law", and purported to regulate certain activities in the City of New Orleans and appeared to be a legislative exercise, as originally drafted, of police power by the City of New Orleans. This 1942 Ordinance was amended by CCS Ordinance # 17,633 passed on June 7, 1949. See Appendix "B". Also, it was again amended by CCS Ordinance # 17,989 passed on December 29, 1950. See Appendix "C". When the City of New Orleans changed its form of government, the "Permit Law" was again amended and re-enacted by MCS Ordinance # 217 passed on November 18, 1954. See Appendix "D". Under the new Mayor Council Series of ordinances, the "Permit Law" was again amended by MCS Ordinance # 3027 passed on January 28, 1965. In this 1965 amendment and re-enactment, the "Permit Law", for the first time, was designated in Chapter 46, § 1 of the Code of the City of New Orleans. Up until, and through, the 1965 Ordinance, it appeared that there was a legitimate effort on the part of the City of New Orleans to "control", not "eliminate" certain "transient vendors". See Appendix "E".

Beginning with MCS Ordinance # 4346, passed on May 28, 1970, there is evidence of an irrational approach to the regulatory scheme of the "Permit Law", and a consequent abandonment of the regulatory aspects of same. See Appendix "F". The First Amendment ofthe United States Constitution undoubtedly shuddered at the efforts of the City Council to regulate the distribution of literature by the imposition of a prohibitive fee of $10,000.00. Though the obvious import was to control "hard core pornography", the language of this MCS Ordinance # 4346 was more than overbroad.

The "hot blood" of theCouncil apparently cooled two months later when it returned to "regulating" the sale of novelties during Mardi Gras in the passage of MCS Ordinance # 4359, dated July 16, 1970. See Appendix "G".

Subsequently, the City Council appeared to "get off of the track" with new amending ordinances to the "Permit Law". In a companion ordinance to MCS Ordinance 4359, the City Council on the same day passed MCS Ordinance # 4360 which deleted Paragraph (14) of Chapter 46 § 1 of theCode of the City of New Orleans which had dealt with the distribution of "samples" and "convassing" on the City streets. See Appendix "H". Thereafter, approximately four months later, the City Council passed MCS Ordinance # 4439 on November 12, 1970, which re-included the permit to allow the distribution of "samples" and "canvassing" on the streets of theCity of New Orleans. See Appendix "I". There does not seem to be any explanation for this rather unusual behavior on the part of the City Council. This action in no way foretold of what was to follow in

the form of a blatant attempt to limit and restrict everything from "religious freedom" to "free enterprise".

Momentarily, normalcy seemed to return to the Council Chambers with the passage of NCS Ordinance # 4555 on May 6, 1971, which dealt again with "transient vendors" at Mardi Gras time. See Appendix "J". The Council was controlling, not eliminating, these "transient vendors" during Mardi Gras and apparently placed reasonable restrictions on them.

Finally, the City Council "broke the ice" with the passage of NCS Ordinance # 4744 on September 23, 1971. See Appendix "K". It is in this Ordinance there first appears the "invidious discriminations" in the form of "exemptions" that now characterize all of Chapter 46, § 1, et seq. The City Council, for the first time, ordained that all permits mentioned in Chapter 46, § 1, et seq., were invalid in the area known as the "Vieux Carre" with the exception of "hot dog" or "hot tamale" push carts, (Paragraph 5); the Jackson Square Artists (Paragraph 10); the sale of "supper tickets" to be held in private homes (Paragraph 12); the sale of goods in bankruptcy proceedings (Paragraph 19); exhibitions, expositions and educational events for which admission is charged or offerings solicited (Paragraph 21); sporting events for which fees are collected (Paragraph 24); amateur and professional prize fights, et cetra (Paragraph 25); church or school festivals, et cetra (Paragraph 26); carnival balls (Paragraph 27); symphony productions where fees are charged (Paragraph 28); orchestras in restaurants or businesses where no admission is charged (Paragraph 29); orchestra music for purposes of dancing where no admission is charged (Paragraph 30); music for entertainment purposes where a fee is charged (Paragraph 31); dancing when admission is charged (Paragraph 32); private dances in public halls (Paragraph 33); conduct of rummage sales (Paragraph 34); carrying on businesses by transient vendors who rent permanent space, not calculated to go over a period of one year (Paragraph 35); individuals selling flowers (Paragraph 38); and individuals engaged inthe business of selling pornography provided, of course, that they paid their $10,000.00 permit fee (Paragraph 41).

It is interesting to note that at the same time NCS Ordinance # 4744 was offered, there was also offered NCS ORdinance # 4746 which eventually passed on December 17, 1971. See Appendix "L". NCS Ordinance # 4746 declared that it was "unlawful to solicit money, subscriptions, advertising, gifts in kind or contributions or sell tickets, or magazines for any charitable, religious, educational or benevolent purposes as herein set forth on the sidewalks ... et cetra ... in the section known as the Vieux Carre ...". At a time when everyone was attempting to encourage charity, religion, education and benevolence, the City of New Orleans was bent on discouraging it. Though not connected with this Appeal, as was pointed out to the Fifth Circuit, this writer, in another suit for different clients, attacked NCS 4746 successfully and had same declared unconstitutional as it related to the exercise of the "religious activities" of the Krishna Consciousness Movement. See International Society for Krishna Consciousness, Inc., et al vs. City of New Orleans, USDC E.D.La. (1972), 347 F.Supp. 945, Appendix "L". The foregoing case is cited not as an effort to confuse or distract this Court from the immediate issues before it, but only to demonstrate concretely the extremes that the City Council was willing to go to for obviously political motives. This is the same City Council that Appellant claims is so concerned over the "charm" and "nostalgia" of the Vieux Carre. Can the City Council who sought to slap the First Amendment squarely in its face as to an issue of religious freedom be the same body about which Counsel for Appellant waxes eloquently as to its concern for the esthetics of the Vieux Carre?

It was shortly after the passage of the above Ordinances that Appellee's manager was arrested in January, 1972. These charges were dismissed as the City apparently realized that Appellee qualified under the "exemption" contained in Paragraph (5) of Chapter 46, § 1 as it then read. However the City was apparently not satisfied with allowing Appellee to take advantage of this "exemption". Thus, the appearance of the "grandfather clause" whereby Appellee would never be able to qualify under its residency requirements.

In keeping with the City Council's alleged concern for the "charm" and "beauty" of greasy hot dog push carts owned by Lucky Dogs, NCS Ordinance # 4822 was passed on April 6, 1972. See Appendix "M". It is with this Ordinance that the "grandfather clause" of which Appellee now complains, first appeared. An arbitrary time span of approximately eight years was chosen as the "cut-off date" for those businesses which would be allowed to conduct their affairs in the Vieux Carre area. Apparently, the City Council didn't realize what it was doing when it initially passed the NCS Ordinance # 4822. Its language precluded everyone, and even the "favored few" pointed out in this writer's discussion of NCS Ordinance # 4744, from doing business in the Vieux Carre.

With the passage of MCS Ordinance # 4822 in April, 1 72, the "hot dog" vendors with more than eight years of experience prior to January 1, 1972, not only enjoyed the "exemption" afforded them through MCS Ordinance # 4744, but now enjoyed the additional insurance of a business monopoly provided they were doing business in the Quarter eight years prior to January 1, 1972. It was no idle coincidence that only Lucky Dogs enjoyed this status. Naturally, this excluded Appellee who had been in the Vieux Carre area prior to January 1, 1972, for a mere two years. This double insurance to Lucky Dogs must have embarrassed the City Council and undoubtedly precipitated its next amendment to the "Permit Law".

The filing of the Civil Rights Action by Appellee on August 1, 1972, must have, no doubt, made the City Council somewhat nervous, lest someone point out the double insurance that the Lucky Dog "hot dog vendors" possessed. Therefore, the City Council passed MCS Ordinance # 4957 as of August 31, 1972,(See Appendix "N") almost one month after the filing of Appellee's Complaint, whereby it deleted from the "exemptions" Paragraph (5) of Chapter 46, § 1. As noted above, this was the paragraph in which the "hot dog vendors" had been mentioned, and which paragraph had been specifically "exempted" from the prohibition against issuing permits to anyone in the French Quarter. If the hot dog vendors enjoyed a "grandfather clause" by virtue of their eight year residency, then they obviously didn't need the "exemption" initially afforded to them.

What had occurred was that someone realized that the mere passage of MCS Ordinance # 4744 did not guarantee the monopoly of the Lucky Dog hot dog vendors. In fact, had nothing else been done, Appellee would have been allowed to operate under the exemption provided in MCS Ordinance # 4744 passed in December, 1971. But, obviously, this was not satisfactory to the City Council. They had to insure that only Lucky Dogs, with eight years experience, be allowed to operate in the Vieux Carre. Thus, MCS Ordinance # 4822 was passed in April, 1972. Appellee then realized that she could no longer enjoy what little exemption was provided to her as per MCS Ordinance # 4744. Obviously she could not qualify under the "grandfather clause" residency requirements. Appellee could not even operate under the "exemptions" as granted to her in MCS Ordinance # 4744. Though initially under MCS Ordinance # 4744 Appellee could have operated her hot dog push carts, the City apparently did not want her to do so, and thus, the arrest of her manager, and subsequent dismissal of the charges once Appellee made it clear that she wasn't going to be pushed around. Appellee's only remedy was to file a Civil Rights Complaint. When Appellee filed her Complaint, the City, perhaps realizing the embarrassing position it was in, turned around and deleted the "exemption" it had previously granted to "hot dog vendors" through MCS Ordinance # 4744, as it was obviously no longer needed to protect Lucky Dog push carts. The intent of theCity Council is obvious from a reading of this Legislative History. What other motive can be ascribed to the removal of the "hot dog vendor" exemption subsequent to the filing of Appellee's Complaint and the granting to Lucky Dog push carts the benefits of the "grandfather clause"?

Once the "hot dog vendors" had been favored, the City Council proceeded to expand that area th which the "grandfather clause" would operate. The City provided a further buffer to Lucky Dog push carts, thereby preventing any guerrilla warfare on th part of Appellee near the close perimeters of the Vieux Carre area. The so-called Central Business District is immediately adjacent to the most active commercial areas of the Vieux Carre. The City Council passed a triumverate of Ordinances which began to talk in terms of the "Central Business District". MCS Ordinance # 5085 was passed on February 8, 1973, which ordained that "transient vendors" could peddle their wares only during certain times prior and after "parade time". An exception was made for these "transient vendors" in that they could compete in not only the Vieux Carre area, but the Central Business District during these "parade times". See Appendix "O".

The second Ordinance taken up in this triumverate is MCS Ordinance # 5086 passed February 8, 1973. See Appendix "P". This particular Ordinance defined the Central Business District wherein the "favored few" could operate their businesses and where Appellee could not.

The last of the triumverate of these Ordinances was MCS Ordinance # 5087, passed February 8, 1973. See Appendix "Q". This Ordinance reiterated all of the "exceptions" previously granted in MCS Ordinance # 4744, and like MCS Ordinance # 4957, left out the "hot dog vendors" who had now been safely covered by the "grandfather clause" of MCS Ordinance # 4822.

All of the above amendments, re-amendments and re-enactments relate to Chapter 46, § 1 & 1.1 of the Code of the City of New Orleans. The "Permit Law", as it presently reads on the books, is contained in Appendix "R".

B. THE "CHARM" AND THE "BEAUTY" OF THE LUCKY DOG PUSH CARTS:

All through the City's brief, they have made much about the "charm" and the "beauty" and "nostalgia" of the Lucky Dog push carts. Appellee has made a part of this brief four photographs recently taken by a professional photographer, John Donnells of the City of New Orleans. Attention is directed to the closer views whereby the peeling paint, makeshift repairs and unsanitary conditions surrounding these Lucky Dog push carts are obvious. Please note the details of the chasis which sits upon two quaint balloon tires supporting a common steel tube frame upon which sits an inarticulately made tin shell which is supposed to represent a "hot dog".

Argument of Fact and Law

As is apparent from Appendix "R", Chapter 46, § 1, et seq. of the Code of the City of New Orleans, purports to set out the "Permit Law" for "...every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth, or to hold meetings or rallies or public entertainments in private or public halls or places ..." However, in the first paragraph of Chapter 46, § 1, there is contained the blanket statement "... such permits, however, are not valid in the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North, and Howard Avenue on the South, except as provided in Chapter 46, § 1.1 of this Chapter..." The area described in the Municipal Ordinance under attack encompasses the area known as the Vieux Carre of the City of New Orleans. Since the filing and arguing of this Complaint in the DistrictCourt, the City Council has expanded the area over which they enforce the discriminatory import of Chapter 46, § 1. Regardless, this only adds to the harm visited upon Appellee, and in no way has affected the issues to be presented before this Court relative to the "invidious discrimination" practiced upon Appellee.

The "invidious discrimination" practiced upon Appellee by virtue of Chapter 46, § 1, has two aspects. Both of these aspects are inter-related and complement each other. Both of these aspects have the same purpose, namely, to eliminate Appellee's participation as a business person within the Vieux Carre, and now the entire Central Business District, while at the same time allowing a "favored few" to conduct businesses which are essentially no different that Appellee's.

The first aspect of this "invidious discrimination" arises out of the reference contained in the first paragraph of Chapter 46, § 1, of the Code of the City of New Orleans, which establishes certain "exemptions" to the general prohibition against the issuance of permits within the Vieux Carre area which is encompassed in the larger Central Business District area. These "exemptions" really amount to "classifications" which distinguish Appellee from the "favored few" covered by the "exemptions". As appears in Appendix "R", permits are invalid in the area known as the Vieux Carre which is encompassed by the greater area of the Central Business District with the exception of "transient vendors" at Mardi Gras time at specified periods before and after "parade times" (Paragraph 1); the Jackson Square artists (Paragraph 10); persons who sell supper tickets to be held in private homes (Paragraph 12); persons who sell goods or auction goods in bankruptcy proceedings, etc. (Paragraph 19); persons or groups who put on exhibitions, expositions and educational events where admissions are charged or offerings solicited (Paragraph 21); persons who put on sporting events for which fees are collected (Paragraph 24); persons who put on amateur and professional prize fights, etc. (Paragraph 25); persons or groups who put on church or school festivals, etc. (Paragraph 26); carnival balls (Paragraph 27); symphony productions where fees are charged (Paragraph 28); orchestras in restaurants or businesses where no admission is charged (Paragraph 29); orchestra music for purposes of dancing where no admission is charged (Paragraph 30); music for entertainment purposes where a fee is charged (Paragraph 31); dancing when admission is charged (Paragraph 32); private dances in public halls (Paragraph 33); conduct of rummage sales (Paragraph 34); "transient vendors" who rent permanent space for the purpose of "closing out" businesses within a period of one year (Paragraph 35); individuals who are selling flowers on the streets (Paragraph 36); and individuals in the business of selling pornography (Paragraph 41) provided, of course, they have paid their $10,000.00 permit fee.

As indicated in Appellee's Statement of Material Facts and the City in it's separate Statement of Material Facts, Appellee was engaged in the sale and distribution of foodstuffs, drinks, confections and novelties throughout the public streets of New Orleans. It is uncontested that the Vieux Carre area which is within the Central Business District of New Orleans was the "prime source of business" for Appellee. It was in this area, and particularly the

Vieux Carre, that Appellee sold "foodstuffs" from push carts. Part of these "foodstuffs" sold were hot dogs. Under the present Ordinance, as it now reads, Appellee must obtain a permit under Chapter 46, § 1 of the Code of the City of New Orleans. As the law presently reads, Appellee, as a "hot dog vendor" enjoys no "exemption" under Chapter 46, § 1 & 1.1. See Appendix "R". Though Appellee would have qualified further exemption granted "hot dog vendors" under Chapter 46, § 1 & 1.1 as amended by MCS Ordinance # 4744, subsequent amendments pursuant to MCS Ordinance # 4822 now precludes Appellee from any "exemption". Appellee must qualify under the "grandfather clause". Insofar as Appellee was doing business for approximately two years prior to January 1, 1972, she cannot hope to qualify for the eight year residency requirement of the "grandfather clause" initiated by MCS Ordinance # 4822. In short, because of the "grandfather clause" Appellee cannot earn a livelihood because of her inability to meet the eight year residence requirement. Because of MCS Ordinance # 4957, Appellee enjoys no "exemption".

The second and most obvious aspect of this "invidious discrimination" arises out of the "grandfather clause". The way the City Counsil has gerry-manded the Ordinances, the Appellee is left with no alternative as to her course of action. Though Appellee, as admitted by the City, was lawfully engaged in the sale of foodstuffs and "hot dogs" before the passing of this "grandfather clause," she now finds herself unable to continue in business simply because she has not been in the Vieux Carre for eight years prior to January 1, 1972. Appellee was there for a mere two years prior to January 1, 1972.

Naturally, the question comes to mind, "What is the 'compelling State interest' asserted by the City to justify its disenfranchisement of Appellee solely on the basis of the fact that she has been in the Quarter, prior to January 1, 1972, for merely two years as opposed to eight years?"

The Appellant-City answers the above question by pointing out in its brief, ".... the economic viability of an area of a City is a valid and compelling purpose that should merit the government's protection through legislation: and, if this area of the City also is vitally important in maintaining the overall economic well-being of the entire City, as is the Vieux Carre, then the interest in closely legislating and protecting the viability of the area is even more compelling." Then the City in its brief attempts to transfer this legitimate end to the preservation of the Lucky Dog push carts which somehow, to quote the City, are part of the "... charm, beauty and tradition that are so vitally necessary for the economic productivity of an entire area of the City as well as that of the City itself."

The facts of this entire case make the Appellant-City's position not only legally untenable, but patently untrue. Their position is best described as an afterthought. It is spurious and borders on inanity. A reading of the Legislative History, as was brought to the attention of the Fifth Circuit Court of Appeals, together with a view of the photographs which are made a part of this brief in Appendix "S" prove the Appellee's position.

Again, this writer points to the Legislative History treated herein. Reference to Appendix "K" reveals that the City Council first attempted to "discriminate" against certain individuals, through enactment of MCS Ordinance # 4744. It was in MCS Ordinance # 4744 that there first appeared the "exceptions" or "exemptions" which have remained unchanged through numerous amendments except for "transient vendors" at Mardi Gras and the "hot dog vendors" (Paragraph 5 of Chapter 46, § 1). Appellee, at first, enjoyed the benefits of the "exception" contained in Paragraph (5) of the "Permit Law" through the amending MCS Ordinance # 4744. However, though the law apparently granted her this "exemption", her manager, Frank Siliker, was still arrested, though the charges were ultimately dismissed. The motive behind this scheme of "invidiously disciminatory legislation" begins to become apparent with the arrest of Appellee's manager when the law, on its face, granted Appellee the benefits enjoyed by Lucky Dog, Inc. But, this is not all of the evidence as to the real motives behind this "invidiously discriminatory legislative scheme". With the passage of MCS Ordinance # 4822 (See Appendix "T"), it becomes apparent as to what the City Council was attempting to do, and that was, push Appellee out of the restricted area, first the Vieux Carre, and later the Central Business District. With the appearance of the "grandfather clause" in MCS Ordinance # 4822, it became more apparent as to the insidious scheme of discrimination that the City Council was attempting to enact. Finally, the most damning evidence of the attempt on the part of the City Council to favor Lucky Dogs, Inc., came after the filing of Appellee's Complaint in the United States District Court when the City Council per MCS Ordinance # 4957 deleted Paragraph (5) which specifically granted an exemption to "hot dog vendors". Naturally, Appellee queried, "Why only the hot dog vendors?" The coincidence of Appellee's filing her Complaint, and the deletion in the "exemptions" of the hot dog vendors must compel this Court to view this insidious scheme of discriminatory legislation with a "jaundiced eye" as did

the Fifth Circuit Court of Appeals. The Lucky Dog, Inc. company which enjoyed its existance in the Vieux Carre area in excess of eight years was taken care of by the "grandfather clause" and no longer needed the "exemption" afforded to it in Paragraph (5) of the "Permit Law". The action of the City Council itself focuses on its obvious intent in this dastardly scheme of legislative chicanery.

As to the "beauty" and "charm" of Lucky Dog hot dog push carts, Appellee submits that the Court view the photographs recently taken by a professional photographer, John Donnels of New Orleans. These pictures are worth "a thousand words". There is nothing "charming" or "beautiful" about these shoddily constructed tin imitations of giant hot dogs. They blend with the charm and beauty of the Vieux Carre as one would expect "oil and water to mix".

The Fifth Circuit Court of Appeals in its decision herein relied heavily upon this Court's treatment of another "invidiously discriminating" law in Morey v. Doud, 1957, 354 US 457, 77 S.Ct. 1344, No. 1 L.Ed.2d. 1485. At page 710 of 501 Fed.2d, the Fifth Circuit noted that the Morey Case, supra, was ".... our chief guide in resolving this case, ..." It appears to Appellee that the Fifth Circuit followed the reasoning of Appellee's counsel in his original brief before the Fifth Circuit, thus, Appellee will reiterate her initial treatment of the law and facts as was presented to the Fifth Circuit.

The landmark decision of Morey v. Doud, 354 US 457, 77 S.Ct. 1344 (1957) is one of the latest and more explicit statements on the import of the Fourteenth Amendment and "statutory discriminations". In this case, under attack was a provision of the Illinois Community Currency Exchanges Act which excepted money orders of the American Express Company from the requirement that any firm selling or issuing money orders in the State must secure a license and submit to State regulation. In that case, the objection was raised that this "exception", as the "exceptions" of the various "permit" holders herein, resulted in a denial of equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution to those individuals as Appellee who were subjected to the requirements of the currency law in Illinois and the exclusions of the "permit law" in New Orleans. The U. S. Supreme Court quite properly held that the Currency Law of Illinois was invalid because of the "discriminatory exception". Most important to our consideration in determining references with which to judge these "exceptions" for certain "permit holders" and the operation of the "Grandfather Clause" is the language of Morey that appears at Page 1349 of 77 S Ct. setting out the "test" to be applied to any potential "discrimination" as follows:

> "In determining the Constitutionality of the Act's application to appellees in the light of its exception of American Express Money Orders, we start with the established proposition that the 'prohibition of the equal protection clause goes no further than the invidious discrimination.' Williamson v. Lee Optical of Oklahoma, 348 US 483, 489, 75 S.Ct. 461, 465, 99 L.Ed. 563. The rules for testing a discrimination have been summarized as follows:
>
> '1. The equal protection clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.
>
> 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.
>
> 3. When the classification in such law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
>
> 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.'
>
> Lindsley v. Natural Carbonics Gas Co., 220 US 61, 78-79, 31 S.Ct. 337, 340, 55 L.Ed. 369."

This Court went on in Morey to note certain qualifying language which will be discussed later in this brief. However, the recitation of the "test" to be applied to any potentially "discriminatory law" cited in Morey is perhaps the most explicit statement that appears in the law. There have been other cases which have admitted that there has been "no precise formula" stated as to the "test" to be applied to "potentially discriminatory laws"; and this writer submits it is important to cite the language of those particular cases, all of which, together with the language of Morey, should be read as a whole in order to determine exactly what we are looking at, and at which the U. S. District Court never did look.

The next significant statement as to the "test" or "standards" to be applied to any potentially "discriminatory law" appears to McGowan v. State of Maryland, 366 US 420, 81 S.Ct. 1101, (1961). In this case the so-called "Sunday Laws" were under attack. Though the Court affirmed the validity of the "Sunday Laws", it dealt with the "standard" to be applied to potentially "discriminatory laws" as appears at Page 1105 and 1106 of 81 S.Ct. as follows:

> "The standards under which this proposition is to be evaluated have been set forth many times by this Court. Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The Constitutional safeguard is offended only if the classification rests on grounds solely irrelevant to the achievement of the state's objective. State legislatures are assumed to have acted within their Constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. See Kotch v. Board of River Port Pilots Com'rs., 330 US 552, 67 S.Ct. 910, 91 L.Ed. 1093; Metropolitan Casualty Ins. Co. of New York v. Brownell, 294 US 580, 55 S. Ct. 538, 79 L.Ed. 1070; Lindsley v. Natural Carbonic Gas Co., 220 US 61, 31 S.Ct. 337, 55 L.Ed. 369; Atchison, T & S. F. R. Co. v. Mathews, 174 US 96, 19 S.Ct. 609, 43 L.Ed. 909." (Own Emphasis).

At Pages 1105 and 1106 of 81 S.Ct., the Court went on to find that the legislature could reasonably find that the Sunday sale of the exempted commodities was necessary for either the health of the community or the enhancement of the recreational atmosphere of the day as it concerned those people who enjoyed the facilities of the beaches. The Court also found that the "record" was barren of any indication that the foregoing "reasonable" basis did not exist. However, at Page 1106 of 81 S.Ct. of McGowen, the Court went on to cite certain language which is significant, as follows:

> "Secondly, appellants contend that the statutory arrangement which permits only one Anne Arundel County retailers to sell merchandise essential to, or customarily sold at, or incidental to, the operation of bathing beaches, amusement parks, etc., is contrary to the 'equal protection' clause because it discriminates unreasonably against retailers and other Maryland Counties. But we have held that the Equal Protection Clause relates to equality between persons as such, rather than between areas and that territorial uniformity is not a constitutional prerequisite...."

The immediate foregoing citation is important to our consideration insofar as we have an individual "person", i.e., Appellee, being discriminated against by favored treatment to "hot dog vendors" in the same "territorial limits" of the Central Business District, all of which is being accomplished without any "compelling State interest" on the part of the City of New Orleans, other than to grant economic favor to the Lucky Dog "hot dog vendors."

As to statements by the Court relating to the "test" as described in Morey, or the "standards" described in McGowen, there is the even more recent case which arose out of the Eastern District of Louisiana from a three-judge panel of Judges Rubin, Comiskey, and Circuit Judge Wisdom. This is the case of Cipriano v. City of Houma, 395 US 701, 89 S.Ct. 1897 (1969); lower court decision at 286 F.Supp. 823 (D.C.E.D. La. 1968). In the Cipriano case, supra, the three- judge panel ruled that the State of Louisiana could set its own standards as to how its people should determine the desirability of issuing public utility revenue bonds. The panel to which Circuit Judge Wisdom dissented, further ruled that the plaintiff, though a qualified voter, but not a property owner, could not participate in an election which required that he own property. The Court reversed the three-judge panel and apparently adopted the dissenting opinion of Circuit Judge Wisdom. This writer would quote the language of Cipriano in the lower court three-judge panel opinion for the reason that it sets out the standards mentioned in Morey and McGowan; and it is also reasonable to assume by the Court's reversal, that this language was given an "expanded import". District Judge Rubin, speaking for the majority, at Page 825 of 286 F.Supp. noted:

> "...the Equal Protection Clause does not command state legislatures to make their laws conform to hydraulic principles be seeking the common - and lowest - level. 'Equal Protection does not require identity of treatment. It only requires that classification rests on real and not feigned differences. That the distinction has some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification as to be wholly arbitrary.' Walters v. City of St. Louis, 1954, 347 US 231, 237, 74 S.Ct. 505, 509, 98 L.Ed. 660. In considering whether a classification rests on a real difference, we must take into account the nature and the relative importance of the subject with respect to which equality is asserted...."

And again at Page 826 of 286 F.Supp., Judge Rubin noted language which defined those "tests" or "standards" to be applied to any potentially "discriminatory law" as follows:

> "Mere classification does not of itself deprive a group of equal protection.[13] Older decisions taught us that legislation that differentiates between two classes is unconstitutional only if the discrimination is irrational, arbitrary or capricious.[14] Only a few weeks ago, the Supreme Court indicated that these principles are still vital. In holding that the one man, one vote principle of Reynolds v. Sims, was applicable to the selection of the Texas County Commissioners, it said, 'The Equal Protection Clause does not, of course, require the state never to distinguish between citizens, but only that the distinctions that are made should not be arbitrary or invidious.' Avery v. Midland County, Texas, 1968, 390 US 474, 88 S.Ct. 1114, 20 L.Ed.2d 45.[15]
>
> "...whether the distinction is invidious depends on the exact factual situation presented."

This writer submits we can assume that the above language of Judge Rubin was not specifically overruled by the Court in its reversalof Judge Rubin's decision. It appears, by this writer, that Judge Rubin, as indicated in the U. S. Supreme Court decision in Cipriano, ignored the very crucial "compelling

State interest" required as a further qualification of the standards cited in Morey and McGowen, as seems to be indicated at Page 1899 of 89 S.Ct. in Cipriano, as follows:

> "As we noted in Kramer, supra, if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others,[4] 'the court must determine whether the exclusions are necessary to promote a compelling state interest.' Kramer v. Union Free School District No. 15, supra, at 627, 89 S.Ct. at 1890. Moreover, no less showing that the exclusions are necessary to promote a compelling state interest is required merely because 'the question scheduled for the election need not have been sumbitted to the voters.' Id. at 629, 89 S.Ct. at 1890, M.11."

Further, the U. S. Supreme Court in Cipriano at Page 1900 of 89 S.Ct. noted as to the "compelling state interest", as follows:

> "...property owners, like non-property owners, use the utilities and pay the rates; however, the impact of the revenue bond issue on them is unconnected to their status as property tax payers. Indeed, the benefits and burdens of the bond issue fails indiscriminately on property owner and non-property owner alike.
>
> "Moreover, theprofits of the utility's operations are paid into the general funds of the city and are used to finance city services that otherwise would be supported by taxes. Of course, property taxpayers may be concerned with expanding and improving the city's utility operations; such improvements could produce revenues which eventually would reduce the burden on the property taxes to support city services. On the other hand, non-property taxpayers may feel that their interest as ratepayers indicate that no further expansion of utility debt obligations should be made. Of course, these differences of opinion cannot justify excluding either group from the bond election, when, as is this case, both are substantially effected by the utility operations. For, as we noted in Carrington v. Rash, 380 US 89, 94, 85 S.Ct. 775, 779, 13 L.Ed.2d 675 (1965), ' '[f]encing out' from the franchise a sector of the population because of the way they may vote is consitutionally impermissible.'
>
> "The challenged statute contains a classification which excludes otherwise qualified voters who are substantially affected and directly interested in the matter voted upon as are those who are permitted to vote. When, as in this case, the state's sole justification for the statute is that the classification provides a 'rational basis' for limiting the franchise to those voters with a 'special interest', the statute clearly does not meet the 'exacting standard of precision we require of statutes which selectively distribute the franchise.' Kramer v. Union Free School District No. 15, supra, at 632, 89 S.Ct. at 1892. We therefore reverse the judgment of the District Court."

This writer submits that Cipriano indicated more of a concern for those "compelling state interests" than is initially indicated in Morey and McGowen. It is submitted that the Court, as of late, though it may be requiring the "burden of proof" to be carried by a person attacking a particular statute on "discriminatory grounds" it is leaning heavily to a consideration of the "compelling state interest", and relying heavily upon this consideration despite the fact that it grants the right to a legislature to "classify".

The Cipriano case mentioned the case of Kramer v. Union Free School District No. 15, 395 US 621, 89 S.Ct. 1886 (1969), which was apparently a companion case to Cipriano. In Kramer, there is language which is important to our considerations as it further defines the "test" of "standard" to be applied to potentially "discriminatory laws". At Page 1889 of 88 S.C.t, Justice Warren notes as to the "test", as follows:

> " 'In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interest which the state claims to be protecting, and the interest of those who are disadvantaged by the classification.' Williams v. Rhodes 393 US 23, 30, 89 S.Ct. 5, 10, 21 L.Ed. 24 (1968)."

Kramer is the first clear indication of what can be reasonably assumed has been the process behind the "test" or "standard" to be applied to any potentially "discriminatory law". The language of Kramer as to the "facts and circumstances behind the law", indicates that the "legislative history" of any law, in this case, Chapter 46, § 1 of the Code of the City of New Orleans, is most important. The above capsulre of the "test" is perhaps the most concise statement of the process of the "test" to be found anywhere in the Supreme Court jurisprudence.

In each of the cases, i.e., Morey, McGowen, Cipriano, etc., this Court has required the "process" so succinctly outlined in Kramer as noted above. For example, the "facts and circumstances behind the law" were gone into in Morey at Page 1349 of 77 S.Ct., in terms of the "purpose of the Act's licensing and regulatory provisions...", as follows:

> "The purpose of the Act's licensing and regulatory provisions clearly is to protect the public when dealing with currency exchanges.[6] Because the American Express is a world-wide enterprise of unquestioned sovereignty andhigh financial standing, the state argues that the legislative classification is reasonable...."

Necessarily, the consideration of the "facts and circumstances behind the law" brings us to consider as in Morey, at Page 1350 of 77 S.Ct., the "differences that are reasonably related to the purposes of the Act" upon which the discrimination in the particular Act is based. As stated herein, these "distinctions" must be based upon "genuinely different characteristics of the business involved," as follows:

> "Of course, distinctions in the treatment of business entities engaged in the same business activity may be justified by

genuinely different characteristics of the business involved.[10] This is so even where the discrimination is by name.[11] But distinctions cannot be so justified if the 'discrimination has no reasonable relation to these differences.' Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 US 459, 463, 57 S.Ct. 838, 840, 81 L.Ed. 1223. In that case, this court held that a state statute which permitted mutual insurance companies to act through salaried, resident employees, but which excluded stock insurance companies from the same privileges, violated the Equal Protection Clause.

"The principals controlling the Smith & Hartford Co. cases, supra, are applicable here. The provisions in the Illinois Act, such as those requiring an annual inspection of licensed community currency exchanges by the State Suditor, make it clear that the statute was intended to afford the public continuing protection. The discrimination favored the American Express Company and does not conform to this purpose. The exception of its money orders apparently rests upon the legislative hypothesis that the characteristics of the American Express Company make it unnecessary to regulate their sales....

"The effect of the discrimination is to create a closed class by singling out American Express money orders. This singling out of the money orders of one company is in a sense the converse of a case like Cotting vs. Kansas City Stockyards Co., 183 US 79, 114-115, 22 S.Ct. 30, 44, 46 L.Ed. 92...."

Itis to be noted at this point that though the language of Morey does not specifically mention the next criterion mentioned in Kramer, in regards to a "compelling state interest"; nevertheless, it is very clear from the language of Morey, which latter case deals with "distinctions in the treatment of business entities", as opposed to the discriminatory "voting laws" of Kramer, that this Court still will require a "compelling state interest". This is clear in the continuation of the last quote at Page 1351 of 77 S.Ct. of Morey, as follows:

"...see also, McFarlan V. American Suga Refinery Company, 241 US 79, 36 S.Ct. 498, 60 L.Ed. 899. In the Cotting case, this Court held that a regulatory statute that in fact applied to only one stockyard in a state violated the Equal Protection Clause. Although statutory discriminations creating a closed class have been upheld,[12] a statute which established a closed class was held to violate the Equal Protection Clause where, on its face, it was 'an apparent attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date.' Mayflower Farms, Inc. v. Penn Eyck, 297 US 266, 274, 56 S.Ct. 457, 459, 80 L.Ed. 675. The statute involved in that case granted a differential from the regulated price at which dealers could sell milk to those dealers in a specified class who were in business before April 10, 1933.

"Unlike the American Express Company, appellees and others are barred from selling money orders in retail establishments. Even if competing outlets can successfully be established as separate businesses, their ability to secure licenses depends upon the showing of 'convenience and advantage'. Perhaps the showing of such could not be made because the unregulated American Express Company had already established outlets in the community. And even if licenses were secured, the licensees would be required to pay licensing and investigatory fees and purchase surety bonds and insurance policy-costs that the American Express Company and its agents are not required to bear.[13] The fact that the activities of the American Express Company are far-flung does not minimize the impact on local affairs and on competitors of its sale of money orders in Illinois. This is not a case in which the Fourteenth Amendment is being invoked to protect a business from the general hazards of competition. The hazards here have their roots in the statutory discrimination.

"Taking all these factors in conjunction - the remote relationship of the statutory classification to the Act's Purpose or to business characteristics and the creation of a closed class by the singling out of the money orders of a named company, without accompanying economic advantages - we hold that the applications of the Act to appellees deprives them of the equal protection of the laws.[14]"

This writer submits that Appellee in the exact situation as were the companies other than the American Express Company described in Morey. However, in this case, Appellee is even in a more serious situation, being completely and totally excluded from the Central Business District; and being deprived of all economic advantages by not even being allowed to apply for a "permit" under Chapter 46, § 1 & 1.1 of the Code of the City of New Orleans. As was the case of the Illinois statute in Morey, this matter before the Court is "an attempt to give an economic advantage to those engaged in a given business ..." Further, the similarity to the Cotting Case, supra, cited in Morey, to out case is astounding. Appellee is confronted with a "grandfather clause" which is more restrictive than the "grandfather clause" in Cotting, which, at least, allowed individuals to remain in business, and made no attempt, as does Chapter 46, § 1 &1.1, to completely ELIMINATE and PROHIBIT the selling of "foodstuffs, novelties, etc." by Appellee while allowing, at the same time, "hot dog vendors" and "flower salespersons" to sell "foodstuffs and novelties".

Further, in support of the position stated above that this Court will still require a "compelling state interest" where there are "distinctions in the treatment of business entities" as opposed to discriminatory "voting laws," there is the very recent case in the U. S. Supreme Court of Weber v. Aetna Casualty & Surety Company, 406 US 164, 92 S.Ct. 1400 (1972). In that situation, the Court struck down a Louisiana law which prohibited recovery rights to dependent unacknowledged illegitimates as violative of the "Equal Protection Clause". In the Weber Case, there appears language at Page 1405 of 92 S.Ct. to indicate the necessity of a "compelling state interest" on behalf of the City of New Orleans to exclude Appellee from selling and distributing "foodstuffs and novelties" in an area where it allows other individuals to do the same, as follows:

> "Having determined that Levy is the applicable precedent we briefly reaffirm here the reasoning which produced that result. The tests to determine the validity of state statutes under the Equal Protection Clause have been variously expressed, but this Court requires, at a minimum, that a statutory classification bears some rational relationship to a legitimate state purpose. Morey v. Dowd, 354 US 457, 77 S.Ct. 1344, 1 L.Ed. 2d 1485 (1957); Williamson vs. The Lee Optical Co., 348 US 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955); Gulf, Colorado & Santa Fe R.R. Co. v. Ellis, 165 US 150, 17 S.Ct. 255, 41 L.Ed. 666 (1897); Yick Wo v. Hopkins, 118 US 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). Though the latitude given state economic and social regulation is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this court exercises a stricter scrutiny, Brown v. Board of Education, 347 US 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); Harper v. Virginia State Board of Elections, 383 US 663, 86 S. Ct. 1097, 16 L.Ed.2d 169 (1966). The essential inquiry in all the foregoing cases is, however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?"

This Court has not been satisfied with the simple "naming" of a "legitimate state interest" and will require that there be some showing of how the statute itself "promotes" that interest, as indicated at Page 1405 of 92 S.Ct., as follows:

> "The Louisiana Supreme Court emphasized strongly the state's interest in protecting "legitimate family relationships," 257 La. at 433, 242 So.2d at 550, and the regulation and protection of the family unit have indeed been a venerable state concern. We do not question the importance of that interest; what we do question is how the challenged statute will promote it. As was said in Glona:
>
> > '[W]e see no possible rational basis....for assuming that if the natural mother is allowed recovery for the wrongful death of an illegitimate child, the cause of illegitimacy will be served. It will, indeed, be far fetched to assume that women have illegitimate children so they can be compensated in damages for their death." Glona v. American Guaranty & Liability Ins. Co., supra, 391 US, at 75, 88 S.Ct. at 1516.'
>
> "Nor can it be thought here that persons will shun illicit relations because the offspring may not one day reap the benefits of Workmen's Compensation." (Own Emphasis)

The lack of a "compelling state interest" on the part of the City of New Orleans will be taken up later herein, but this writer cannot resist the temptation to point out that the only indication of the "compelling state interest" is that the "economic welfare" of the City of New Orleans rests upon the tourist trade, and that "no tourist or a citizen appreciates peddlers or hawkers", and the City has decided that "some peddlers" are to be allowed to peddle, but not the Appellee. Also, it is all right, the City holds, for the City Council to allow "peddlers" who have been "over a long period of time part of the charm and beauty that is the Vieux Carre." This rationalization is patently absurd. The "legislative history" of chapter 46, §1, belies the position of counsel for Appellant. The "legislative history" is simply a history of not knowing what to do for the "favored few". The criterion of "time" somehow making the Lucky Dog pushcarts more charming and attractive and a part of the Vieux Carre, is absurd. While one could agree with "regulation" of "food peddlers and novelty salesmen," one can never agree with what has apparently occurred, that is, "favoritism".

Finally, from the above, it appears that the "interest of those who are disadvantaged by the classification" is most important as noted in Weber at Page 1405 of 92 S.Ct., as follows:

> "The essential inquiry in all the foregoing cases is, however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?"

Needless to say, as will be shown herein, one of the most precious "fundamental personal rights", the right to earn a livelihood, is at stake.

From the above, it is apparent that there are no less than THREE CRITERIA by which this Court has been guided in consideration of "discriminatory laws", as follows:

FIRST CRITERION:

> The Facts and Circumstances Behind the Law - The Legislative History - The Differences Upon Which the Classification Rests

SECOND CRITERION:

> The Interest Which the State Claims to be Protecting - The Compelling State Interest

THIRD CRITERION:

> The Interest of Those who Are Disadvantaged by the Classification - The "Personal Rights" Endangered

FIRST CRITERION:

The Facts and Circumstances Behind the Law - The Legislative History - The Differences Upon Which the Classification Rests.

This criterion necessarily brings us to a consideration of the "purpose" of Chapter 46, §1 & §1.1, as noted previously in this Brief. The only indication of the "purpose" of the presently designated Chapter 46, §§ 1 & 1.1, appears in the initial CCS Ordinance #15,510, dated February 20, 1942, as appears in Appendix "A", herein. The preamble of that now ancient Ordinance is as follows:

"AN ORDINANCE regulating and fixing the cost of permits issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors or merchandise, solicitors, canvasses, etc., for the holding of fish frys, parades, circuses and the holding of meetings, rallies and public entertainments, etc., and repealing....."

"WHEREAS, in order to safeguard public safety, health, comfort and the general welfare of the people of New Orleans, it is necessary that proper supervision and regulations be imposed on all persons, firms or corporations who in any way desire to use the public streets, sidewalks or other public places, or private or public halls for the conduct of any business or calling or the holding of any meetings or public entertainment; therefore...."

The original CCS Ordinance #15,510 went on to categorize certain activities and specify the amount of "permit fee" required in each case. As can be gleaned from a reading of this first Ordinance, it did not seek to PROHIBIT and ELIMINATE any particular activity, but only required that in the case of each particular activity, a "permit fee" be paid; thereby, this writer assumes, insuring that the City could have some ultimate control over the conduct of businesses upon its streets, a perfectly legitimate objective and classification by the City of New Orleans in 1942 in exercising its Police Powers as recognized in Morey.

Subsequent amendments to this original CCS Ordinance #15,510 appeared through CCS Ordinance #17,633, dated June 7, 1949, where photographers were required to pay a "permit fee". See "B". Further, the "purpose" of CCS Ordinance #15,510 was reiterated by virtue of CCS Ordinance #17,989, dated December 29, 1950. See Appendix "C". This purpose, with some minor changes, remained essentially the same as in the original ordinance. Also, in a legitimate exercise of "police power" the then Commission Council required automatic coin vending machines and "penny vending machines" to obtain a "permit."

The "revenue aspects" of original CCS Ordinance #15,510 were brought out by NCS Ordinance #217, dated November 18, 1954. See Appendix "D". There the City Fathers ordained that 25 cents should be added to each of the fees obtained in order to place it in the Police Pension Fund. The City Council by NCS Ordinance #3027, dated 1/28/65 (See Appendix "E") amended the obvious successor of old CCS ordinance #15,510, CCS, which from that time on would be identified by what we know it today, i.e., Chapter 46-1, of the Code of the City of New Orleans.

With the appearance of NCS Ordinance #4344 (See Appendix "F"), there first begins to appear the type of mentality required to put the present Chapter 46, §§1 & 1.1, in its present form. This particular ordinance added a rather interesting Paragraph 41 to the "permit law" which required that "pornography dealers" pay a $10,000.00 fee, a rather interesting requirement. Then there appears NCS Ordinance #4359 (See Appendix "G"), which simply added "transient vendors" at Mardi Gras to the list of persons required to obtain "permits". Further, as appears at Appendix "H", the City Council passed NCS Ordinance #4360, which deleted Paragraph 14 as a required permit, for no apparent reason. This permit dealt with canvasses, and the like. However, this Paragraph 14 dealing with canvasses was put back into the law by virtue of the next NCS Ordinance #4439 (See Appendix "I"), wherein the City Council apparently re-enacted the entire scheme of "permit fees", apparently increasing the required fees, and doing nothing else. Within this particular ordinance, there first appears a PROHIBITION against selling novelties, souvenirs, candies, nuts, etc. within two blocks of any elementary or secondary school while the school is in session. The obvious interest in this is most apparent and seems to be a very legitimate prohibition which applies to all vendors of these items. This writer simply points this out as a legitimate exercise of police authority, and this particular section has never been in question by Appellee.

Then again, the City Council took to regulating, not EXTINGUISHING, the "transient vendors" during Mardi Gras through Ord. 4555, NCS, dated 5/6/71, at Appendix "J".

IT IS IMPORTANT TO NOTE at this juncture of the Legislative History that up until this time and through the above ordinances, there was never any serious attempt to "discriminate" against any individual or person in favor of other individuals engaged in businesses in the Vieux Carre or the later expanded area of the Central Business District. Up until this time, the scheme of the Legislative History of Chapter 46, §§1 & 1.1 was to regulate not ELIMINATE, and FAVOR a few!

It is with the appearance of NCS Ordinance #4744 (See Appendix "K") that there is evidence of an effort to legislate for a "favored few". The City Council ordained by virtue of NCS Ordinance #4744, that all of the "permits" were invalid in the Vieux Carre area, except as provided in an additional

paragraph to Chapter 46-1 of the Code of the City of New Orleans. The category of "flower sales persons" was among the "exceptions" noted in Chapter 46, §1.1, together with the "hot dog vendors" of Paragraph 5; the Jackson Square artists of Paragraph 10; "supper ticket" salesmen for private homes of Paragraph 12; persons who sell goods or auction goods in bankruptcy proceedings contained in Paragraph 19; persons or groups who put on exhibitions, expositions and educational events where admissions are charged or solicited as appears in Paragraph 21; etc., all as appears above in this brief. It is interesting to note that the pornography outlets (Paragraph 41) were not excluded from the Vieux Carre. This writer submits that the City Council knew very well the consequences of trying to attempt to squelch First Amendment rights, and really did not want to "trifle" with that particular group of salesmen.

Therefore, with the addition of Section 1.1 to Chapter 46 of the Code of the City of New Orleans by virtue of MCS Ordinance #4744 (See Appendix "K"), there began to appear TWO CLASSES of "permit holders"; those "permit holders" who could operate in the Vieux Carre area later to be expanded to include the Central Business District, and those who could not. However, the DIFFERENCES upon which these two classifications were made are not only mysteriously unapparent from a reading of the law, but events subsequent to Ordinance 4744, MCS, in regard to Appellee indicate an "intent" or "purpose" other than that admitted by the City in its Memorandum. Though one would assume that Appellee would be able to qualify under MCS Ordinance #4744 with her pushcarts for a "permit" to allow her to sell "hot dogs and hot tamales" and enjoy the "exception," Appellee's Business Manager was arrested for violation of the foregoing Chapter 46, §1 & 1.1, as amended by Ordinance 4744 of the Code of the City of New Orleans.

This writer submits that it is impossible to believe that there were any REAL DIFFERENCES in the identities and functions and activities of Appellee and the Lucky Dog "hot dog vendors" at the time of MCS Ordinance #4744, so as to justify the arrest of Appellee's Manager. Of course, as noted herein, the charges were dismissed.

Further indication of the obvious "intent" and "purpose" of this scheme of insidious legislative chicanery revealed itself in the form of

further amendments dealt with above in this brief, to-wit: the April, 1972 MCS Ordinance #4822, where the "Grandfather Clause" first appeared, and the subsequent effort to "cover their tracks" in MCS Ordinance #4957, where the "hot dog vendor exemption" in ¶(V) was deleted. This writer has treated these matters above and will not reiterate them again except by mentioned them in passing.

As noted in Weber, the simple "naming" of a "legitimate state interest" is not sufficient. There must be a showing of how the ordinance itself "promotes" that particular interest. This brings us back to the REAL DIFFERENCES between Appellee's pushcart food distribution scheme and that of the Lucky Dog "hot dog vendors".

Are we to believe, as suggested by the City, that the City has the right to allow "some peddlers" and at the same time disallow the Appellee, simply because "some peddlers," i.e., Lucky Dog hot dog vendors, have been in the Vieux Carre for such a long period of time so as to "become a part of the charm and beauty that is the Vieux Carre?" Such reasoning is not only spurious, but laughable. It is pure "slapstick comedy" rationale. The City of New Orleans is suggesting that mere "length of time" somehow turns an often illpainted, shabby, Lucky Dog pushcart from which the odor of stale buns and second grade hot dog meat emanates into an acceptable "sight" for tourists, as opposed to Appellee's pushcarts.

Though one could perhaps grant that there are "real differences" between the sale and distribution of"flowers" as opposed to the sale of "foodstuffs", one cannot concede any differences between the sale of Lucky Dog hot dogs and the sale of Appellee's hot dogs, etc., merely because Lucky Dog hot dogs have been in the Vieux Carre area for "a long period of time", and somehow have "become a part of the charm and beauty that is the Vieux Carre."

What has been described thus far as the "Grandfather Clause" is, in essence, no "Grandfather Clause" at all. It was merely an attempt to provide a "place in the sun" for the "favored few," one of whom was the Lucky Dog vendors to the exclusion of everyone else. This is borne out in State Court cases which specifically dealt with "Grandfather Clauses" and for purposes of

this brief are important for information and their reasoning. Both of these cases are reported from the Supreme Court of Florida.

In Eslin v. Collins, 108 So.2d 889 (1959), the Florida State Supreme Court held as unconstitutional a "Grandfather Clause" which operated exactly as the "Grandfather Clause" of Chapter 46, §§1 & 1.0. In declaring it uncon0 stitutional, the Supreme Court of Florida called upon those principals enunciated in Morey, McGowen, Cipriano, Weber, et al., noted above. What is important to us is the definition cited by the Court as Page 890 of 103 So.2d, as follows:

> "....Ordinarily, as applied to the regulation of a profession, a Grandfather Clause exempts from the examination pre-requisite to obtaining a license, those who were already bona fide engaged in the practice of a profession being regulated for the first time. See State ex rel. Garrison v. Reeve, 104 Fla. 196, 139 So. 817, 79 A.L.R. 1119; Doller v. Reid, 1948, 308 Ky. 348, 214 S.W.2d 584; Watson v. State of Maryland, 1910, 218 US 173, 30 S.Ct. 644, 54 L.Ed. 987; Bent v. State of West Virginia, 1889, 129 US 114, 9 S. Ct. 231, 32 L.Ed. 623. 'Such exception proceeds upon the theory that those who have acceptably followed the profession in the community for a period of years may be assumed to have the qualifications which others are required to manifest as a result of an examination before a board of medical experts.' ...." (Own Emphasis)

After defining a Grandfather Clause the Florida State Supreme Court went on to note in regards to the Act under attack that it not only created a "closed class of specially licensed naturopaths who had been practicing for more than two years on October 1, 1957, it also created a close class within that class, consisting of naturopaths who had been licensed and practicing for at least 15 years as of that date." As appears at Page 891 of 108 So.2d. The Florida State Court went on to note on Page 891 that the law treated those naturopaths who had been licensed two years differently and unequally from those who had been licensed for at least 15 years as of the cutoff date cited therein. Further, the Florida Supreme Court went on to note that in each case, the naturopaths, whether they had been practicing and licensed for two years or fifteen years, had received approximately the same type of training. The Florida Supreme Court at Page 891 went on to note:

> "We can conceive of no reasonable basis for the classification here attempted to be made. Both classes of naturopaths were required to take the same training and pass the examination required as a condition of obtaining a license to practice naturopathy."

Further, at Pages 891 and 892 of 108 So.2d, the Florida Supreme Court went on to reason further as to why that particular Grandfather Clause was improper, which reasoning is particularly applicable to our situation and speaks to our immediate problem, as follows:

> "The purpose of the purported"grandfather clause' of the Act was to save the right of naturopaths licensed for more than two years to continue in the practice. Assuming without deciding that the legislature could validly create such a closed class, we can conceive of no reasonable basis for the attempt here made to grant special privileges to a limited group, itself a closed class, within the larger closed class. Accordingly, it must be held that the legislative classification is arbitrary and unreasonable and thus a denial to the appellant of the equal protection of the law. See Riley v. Lawson, 106 Fla. 521, 143 So. 619; State ex rel Voris v. Knott, 135 Fla. 206, 184 So. 752; Morey v. Doud, 1957, 354 US 457, 469, 77 S.Ct. 1344, 1 L.Ed.2d 1485; 11 Am.Jur., Constitutional Law, §285, p. 1046."

Turning to our Chapter 46, §§1 & 1.1, there is indeed a great deal of similarity between the Act declared unconstitutional by the Florida Supreme Court and the Municipal Ordinance which Appellee is now attacking. For the foregoing reason, the rationale of the Florida Supreme Court in the Eslin Case, supra, is applicable herein.

This writer submits that the reasoning of the Florida court is the correct reasoning to be applied to Municipal Ordinance, Chapter 46, §§1 & 1.1. In Eslin there was involved the licensing of a profession, naturopathy. In this case herein, there is involved the licensing of "hot dog vendors". In each instance, the profession or "calling" had to meet certain standards. In the case of the "hot dog vendors," there are certain minimal standards of behavior and cleanliness which would have to be met in accordance with the applicable "Health Laws" of the City of New Orleans. Within each of the professions or "callings," there was a similarity of training and background. There was absolutely no difference between the "two year" and"fifteen year" naturopath. There certainly is no difference between the Lucky Dog "hot dog vendors" and Appellee's "hot dog vendors." Most importantly, in the case of the naturopaths, the legislature sought to create a class within a closed class. Similarly, the City of New Orleans seeks to create a class within a class. Not only does the City seek to make certain "exceptions" within the Vieux Carre area initially and later within the entire Central Business District, but it goes on further to create a special class of "hot dog vendors" who have been in the Vieux Carre and Central Business District for more than eight years. The

reasoning of Eslin is compelling to our present situation.

As a point of information, this Court's attention is further directed to another Florida case, that of Midstate Hauling Co. v. Mason, 177 So.2d 206 (1965), where the real intent and purpose of "grandfather clauses" is again described at Page 210 thereof as follows:

> "...We cannot emphasize too greatly the fact we are dealing essentially with the so-called Grandfather Clauses. The whole purpose of a Grandfather Clause in a licensing statute is to exempt from statutory regulation, imposed for the first time those persons already in the field who have followed the trade and may be presumed to possess necessary qualifications. In the case of Commonwealth Air Transport v. Stuart, 303 Ky. 69, 196 S.W.2d 866, at Page 869, the Kentucky Court said:
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> > 'In initial regulatory statutes they [grandfather clauses' satisfy "the dictates of fairness by affording sanction to enterprises heretofore established". United States v. Maher, 307 US 148, 59 S.Ct. 768, 771, 83 L.Ed. 1162. They [grandfather clauses] serve to avoid hardships which would result from forcing a carrier to justify his existing business in terms of public convenience, and recognizes vested such rights as had grown up before the enactment of the statute.' "

The Florida Supreme Court in MidState went on to cite Eslin and the language noted above.

From all of the above citations, it is fair to state that "Grandfather Clauses" are legitimate if they are utilized as described in Maher, Midstate and Eslin; that is, to avoid hardship to those individuals already in business and recognize that "vested interest" in not having to completely rearrange and adjust their business activities. But, in our case, Chapter 46, §§1 & 1.0, we do not have an effort to enact a true "Grandfather Clause" as commonly understood by this Court, the Supreme Court of Kentucky and the Supreme Court of Florida. What we have is an obvious effort to DISENFRANCHISE and ELIMINATE the business operations of Appellee on the flimsy basis that the Lucky Dog salesmen had "over a long period of time become a part of the charm and beauty that is the Vieux Carre." There is absolutely no "real difference" between the operations of the Lucky Dog "hot dog vendors" and Appellee. Both use "pushcarts." Both sell and distribute "foodstuffs." Both as admitted by the City in all of its pleadings had been in business pursuant to "valid mayorality permits in 1972."

Considering the fact that the "sales personnel" for both Lucky Dog and Appellee are likely to be more of a "transient type", there is no legitimacy in any argument that somehow "hot dog salesmen" obtain NECESSARY QUALIFICATIONS by virtue of their association with one company which has been in business for "eight years" prior to January 1, 1972, other than a company which has been in business for "one year", prior to January 1, 1972. Assuming, for the sake of argument, that each and every salesman of the Lucky Dog "hot dog vendor" business scheme had been with the company since its inception approximately eight or nine years prior to January, 1972, there is no reason to assume that these "hot dog salesmen" would be better qualified to sell hot dogs than the "hot dog salesmen" working for Appelle for two years prior to January, 1972. What does eight years do for a "hot dog salesman"? Is that veteran of eight years ofhot dog sales more qualified to "spread the mustard" than the veteran of only one year hot dog salesmanship? Obviously, there are no "necessary qualifications" gained by people, whether they work for eight years or one year at selling hot dogs which could be pointed out as the "real differences" upon which the City Fathers discriminated against Appellee. The fact is, THERE ARE NO REAL DIFFERENCES upon which the City Council could have based any legislation which not only created a "closed class of exceptions" within the Vieux Carre and later the Central Business District, but created another "closed class" within the class of 'hot dog vendors" which could potentially sell hot dogs in the French Quarter and the Central Business District.

This writer submits that the City Council was apparently uninterested in any REAL DIFFERENCES between the Lucky Dog vendors and Appellee's vendors. It was only interested in granting an ECONOMIC ADVANTAGE to the Lucky Dog vendors. Again this was not based upon any REAL DIFFERENCE between either party. It is submitted that the Legislative History as appears from the above indicates a scheme to grant ECONOMIC ADVANTAGE to a "favored few", and this was done without consideration of any LEGITIMATE or REAL DIFFERENCES between the Lucky Dog vendors and Appellee.

SECOND CRITERION:

The Interest Which the State Claims to be Protecting -
The Compelling State Interest

The only indication of the "compelling state interest" that prompted the City Council for the City of New Orleans to gerrymander good reason and

sense in bringing Chapter 46, § 1 & 1.1 to their present state appears in the Memorandum of the City Attorney in support of his Motion for Summary Judgment and is quoted here in its entirety for whatever it is worth, as follows:

> "The interest of the City of New Orleans and the State of Louisiana are vitally affected as regards to that section known as the Vieux Carre. The economic welfare of the City of New Orleans rests on this specially designated area. It is the heart of the City's tourist industry. The incalculable value of this tourist trade prompted the City Council to adopt ordinances to preserve the integrity and to insure the economic viability of the area in a way most conducive to both tourists and citizen alike. No tourist or citizen appreciates peddlers or hawkers interferring with their rights to observe and to enjoy the beauties of the New Orleans Vieux Carre. The fact that some peddlers are allowed to peddle and not the plaintiff in this action only tends to demonstrate the City Council's interest in keeping the Vieux Carre the tourist attraction it has always been. The Council sought to allow those peddlers to remain who have over a long period of time become a part of the charm and beauty that is the Vieux Carre. The City should not be caused to lose its entire remedial scheme because it failed to cover every peddler at one time ..."

A repetition of the above reasoning on the part of the Appellant-City appears at page 17 of Appellant-City's brief which was referred to the Court.

What the City has obviously failed to grasp is the fact that the mere "naming" of a "compelling state interest" does not somehow magically pass a "discriminatory scheme" into the safe harbor of constitutionality. Again, the Weber case, supra, is cited, particularly its language as appears at Page 1405 of 92 S.Ct., as follows:

> "The Louisiana Supreme Court emphasized strongly the state's interest in protecting 'legitimate family relationships', 257 La. at 433, 242 So.2d at 550, and the regulation and protection of the family unit have indeed been a venerable state concern. We do not question the importance of that interest; what we do question is how the challenged statute will promote it. As was said in Glona:
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> > '[W]e see no possible rational basis ... for assuming that if the natural mother is allowed recovery for the wrongful death of an illegitimate child, the cause of illegitimacy will be served. It will, indeed, be far-fetched to assume that women have illegitimate children so they can be compensated in damages for their death.' Glona v. American Guaranty & Liability Ins. Co., supra, 391 US at 75, 88 S.Ct. at 1516.
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> "Nor can it be thought here that persons will shun illicit relations because the offshpring may not one day reap the benefits of Workmen's Compensation."

Thus, the "economic welfare of the City of New Orleans" is indeed as was the "legitimate family relationships" in Weber, a "venerable state concern". However, as in the case of Weber, the process whereby this "venerable City concern" is implemented by this Ordinance which completely ignores any "real differences" is beyond this writer. Granted, "no tourist or citizen appreciates peddlers or hawkers interferring with their rights to observe and to enjoy the beauties of New Orleans Vieux Carre." But how does the allowance of Lucky Dog "hot dog vendors" to the EXCLUSION of Appellee's "hot dog vendors" give tourist or citizen immunity from interference with their "rights to observe and to enjoy the beauties of the New Orleans Vieux Carre"? Obviously, this is a spurious argument and overlooks the fact that any "improper behavior" that would in fact interfere with a tourist or citizen can be easily handled by the laws on the books of the Code of the City of New Orleans and the State of Louisiana. Assuming that the City of New Orleans through its "permit laws" can control the number and quality and integrity of its "hot dog vendors", any argument that there will be an overage of "hot dog vendors" and somehow they will be "getting in the way" of citizen and tourist is made spurious.

There is no question that the City of New Orleans can REGULATE, but there is indeed serious question that it can ELIMINATE without any SUBSTANTIAL and REAL DIFFERENCES upon which to eliminate businesses which prior to a law had been lawfully engaged. You cannot simply take away the "vested interest" of a citizen to earn a living simply because it suits the unsubstantial convenience of the City of New Orleans.

Not only does the law require that the legislative authority use proper means to protect its "compelling state interest", but as indicated above, whatever "classification" is set up, the "classification" must first be reasonably designed to effect the purpose of protecting "compelling state interest", and secondly, and just as important, the "classification" must be based upon REAL DIFFERENCES. As shown above, to allow one group of "peddlers and hawkers" in an area to theEXCLUSION of another group of "peddlers and hawkers", is certainly not eliminating the "peddlers and hawkers" problem, or whatever one chooses to describe it as. Further, if allowing one group of "peddlers and hawkers" to remain in an area to the exclusion of other groups of "peddlers and hawkers" can in any way be assumed to protect the "economic welfare of the City of New Orleans", then the "classification" which effects this EXCLUSION must be based upon REAL DIFFERENCES between the groups. As indicated above, the latter consideration is indeed failing on the part of Chapter 46, § 1 & 1.1. This writer has already dealt with the fact that a supposed veteran of eight years of hot dog sales is no more qualified to spread mustard that a veteran of only one year of hot dog sales.

If we were to follow the reasoning put forth by the City of New

orleans via its pleadings, then the City need only identify one of its real "compelling interests" and by whatever means it desires, proceed to implement it. Thus, by the reasoning of the City it would be perfectly acceptable for the City in realization of its "compelling interest" to promote the economic welfare of the City to declare that anyone who wants to go into business have to do business in areas which the City thought were most lucrative for the benefit of the City. The City would have us believe that it simply has to identify a "compelling city interest" and proceed to implement that interest in whatever way pleases it. Thus, by ELIMINATING the business activities of Appellee in a particular area while allowing the Lucky Dog "hot dog vendors" to flourish. The City would have us believe that there is a problem with the "peddlers and hawkers" and that though the Lucky Dog "hot dog vendors" are part of the group of "peddlers and hawkers", their presence will somehow solve the "peddlers and hawkers" problem as far as interferring with the citizens and tourists rights to observe the beauty and charm of the Vieux Carre.

In essence, the City of New Orleans asked us to believe that it is attempting to solve the "peddlers and hawkers" problem by installing a group of "hot dog peddlers", while at the same time excluding all other "hot dog peddlers" such as Appellee. THIS IS ABSURD. And again, the Court is reminded that even if this were a way to get rid of the "peddlers and hawkers", the "classification" by virtue of the "grandfather clause" and the "exceptions" is not based upon any REAL DIFFERENCES between the Lucky Dog vendors and Appellee's vendors.

THIRD CRITERION:

The Interest of Those Who are Disadvantaged by the Classification - The Personal Rights Endangered

The basic right involved herein is that one upon which, in these United States, rests not only most of our personal liberties, but the very economy and economic well-being of the country. No less than Appellee's right to earn a living is involved herein.

This Right to Earn a Living is so deeply rooted in our political and economic history that reference to it can be readily found from the most ancient jurisprudence. In discussing the "Privileges and Immunities" to which all citizens are entitled, Circuit Judge Washington in Corfield v. Coryell, C.C.,E.D.Pa., 1823, 6 Fed.Cas. 546, indicated at Pages 551 and 552, as follows:

> "The next question is, whether this act infringes that section of the constitution which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states?' The inquity is, what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent and sovereign. What these fundamental principals are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government, the enjoyment of life and liberty with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeus corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added, the elected franchise, as regulated and established by the laws of the Constitution of the state in which it is to be exercised." (Own emphasis)

It is to be noted that most of the Privileges and Immunities recognized in the Corfield Case, supra, are such that deal with the acquisition of property particularly the RIGHT TO EARN A LIVELIHOOD. This RIGHT TO EARN A LIVELIHOOD is certainly not a "right" to be ignored.

Later decisions, particularly the decision ofter referred to in dealing with "discriminatory laws" have reaffirmed this RIGHT TO EARN A LIVELIHOOD. Specifically, Yick Wo v. Hopkins, 117 US 566, 6 S.Ct. 1064 (1886), recognized as "fundamental" the RIGHT TO EARN A LIVELIHOOD as appears at Page 1071 thereof as follows:

> ".... but the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the Government of the Commonwealth 'may be a government of laws and not of men'. For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

It should be noted that Appellee concedes that the City of New Orleans may REGULATE, but she absolutely refuses to recognize in any way the right of

the City of New Orleans to completely ELIMINATE her RIGHT TO EARN A LIVELIHOOD, as is the case herein. Referring to Yick Wo, at Page 1071, 6 S.Ct., though speaking of the "elective franchise", the language that appears therein as to "regulation" is most appropriate to our instant case. Immediately after the above quotation in Yick Wo and beginning with the next paragraph at Page 1071, 6 S.Ct., the Court went on to note:

> "There are many illustrations that might be given of this truth, which would make manifest that it was self-evident in the light of our system of jurisprudence. The case of the political franchise of boting is one. Though not regarded strictly as a natural right, but as a privilege merely conceded by society, according to its will, under certain conditions, nevertheless, it is regarded as a fundamental political right, because preservative of all rights. In reference to that right, it was declared by the Supreme Judicial Court of Massachusetts, in Capen v. Foster, 12 Pick. 485, 488, in the words of Chief Justice Shaw, 'that in all cases where the Constitution has conferred a political right or privilege, and where the Constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power to adopt any reasonable and uniform regulations, and regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right in a prompt, orderly, and convenient manner;' nevertheless, 'such a construction would afford no warrant for such an exercise of legislative power as, under the pretense and color of regulating, should subvert or injuriously restrain, the right itself.'"

The above immediate quote was speaking of another "fundamental right" that of the "elective franchise". However, the language from the above quote and the one preceding it from Yick Wo, indicate that another "fundamental right" is the RIGHT TO EARN A LIVELIHOOD, and the smae standards that are applied to the right of the "elective franchise" are to be applied to the RIGHT TO EARN A LIVELIHOOD. It is a certainty, that while the State has a right to REGULATE it does not have a right ... "under the pretense and color of regulating ... [to] subvert or injuriously restrain, the right itself." This is precisely what the City of New Orleans is seeking to do under the guise of REGULATION. In fact, it is making absolutely no attempt to hide the fact that it is not REGULATING, but it is in fact, ELIMINATING the "fundamental right" of Appellee TO EARN A LIVELIHOOD.

This same reasoning has been carried forward by such cases as New State Ice Co. v. Liebmann, 285 US 352, 52 S.Ct. 371 (1932), where at page 374 thereof, the Court pointed out:

> "Plainly, a regulation which has the effect of denying or unreasonably curtailing the common right to engage in a lawful private business, such as that under review, cannot be upheld consistent with the Fourteenth Amendment. Under that amendment, nothing is more clearly settled than that it is beyond the power of a state, 'under the guise of protecting the public, arbitrarily [to] interfere with the private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.'"

And more recently, in the case of Shapiro v. Thompson, 394 US 618, 89 S.Ct. 1322 (1969), the U. S. Supreme Court reiterated the logic of Corfield, Yick Wo, New State Ice Co., and others, in regards to what a state, or in this case a City, can do to basic Constitutional rights. Shapiro even recognizes Corfield at footnote 8 as appears at Page 1329 of 89 S.Ct. in reiterating the "fundamental rights" to which any citizen is entitled. Further, at Page 1331, of 89 S.Ct., the Court reiterates all of what has been traced above, but speaks in terms of "compelling governmental interest", as follows:

> "At the outset, we reject appellant's argument that a mere showing of the rational realtionship between the waiting period and these four admittedly permissible state objectives will suffice to justify the classification ... (citations) ... The waiting period provision denies welfare benefits to otherwise elligible applicants solely becuase they have recently moved into the jurisdiction. But in moving from the state to state or to the District of Columbia, appellees were exercising a constitutional right, and any classification which serves to penalize their exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional .., (citations)..."

Again, and more recently, the U. S. Supreme Court has indicated that it will not tolerate any interference with the "fundamental rights" such as the right to earn a livelihood unless there can be shown some "compelling state interest", or in this case, "compelling city interest", none of which exists as indicated above in this instance.

C O N C L U S I O N

The City of New Orleans through Chapter 46, § 1 & 1.1 of the Code of the City of New Orleans seeks, not merely to REGULATE, but ELIMINATE the legitimate business activities of Appellee, which prior to 1972 had been condoned by the City in the very area where Appellee is now prohibited from selling "hot dogs". Though the Appellee is not in the business of "selling diamonds", the sale of hot dogs is important to her as would be the sale of precious stones to a diamond merchant. Nevertheless, the Constitution of the United States does not look qualitatively at a man's livelihood and ask what is the price of his wares and judge his right to sell them on the basis of their value or lack of value. The United States Constitution guarantees the right to EARN A LIVELIHOOD regardless of how humble it may be.

There certainly is a "compelling interest" on the part of the City of New Orleans to protect its "economic welfare", and particularly as it exists in the Central Business District. However, there can be no conceivable "compelling state interest" to solve the "peddlers and hawkers" problem by placing a "hot dog peddler", i.e., Lucky Dog, in the Central Business District, and at the same time excluding Appellee from peddling her hot dogs. Further, this "classification" by means of a "grandfather clause" rests upon no REAL DIFFERENCE between Lucky Dog "hot dog vendors" and Appellee's "hot dog vendors". They are both "hot dog peddlers", and neither has any more facility than the other to deliver their hot dogs to the waiting, anxious and hungry hoards of "tourists and citizens" who want to "observe the charm and beauty that is the Vieux Carre" (also the Central Business District), while stuffing what probably is a second-grade hot dog dripping with chili, mustard and onions down their esophagi, all of which, we can all concede, promotes the "economic welfare" of the City of New Orleans.

Respectfully submitted:

JOSEPH NEVES MARCAL, III
Attorney for Appellee
2176 Esplanade Avenue
New Orleans, Louisiana 70119
Phone: (504) 581-7331

C E R T I F I C A T E

The undersigned hereby certifies that a true and correct copy of the above and foregoing has been served on every counsel of record by depositing same in the United States mail, postage prepaid, properly addressed this 19th day of March, 1975.

JOSEPH NEVES MARCAL, III

APPENDIX "A"

13510.

Mayor—Pty of New Orleans,
City Hall, Feb 20, 1942
Calendar No 16,215

NO. 13,510 COMMISSION COUNCIL SERIES

AN ORDINANCE regulating and fixing the cost of permits issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors of merchandise, solicitors, canvassers, etc., for the holding of auction sales, shows, circuses and the holding of meetings, rallies and public entertainments, etc. and repealing Ordinances Nos. 14,294 14,302, 14,434 and 13,747 C. C. S. and any and all ordinances and parts of ordinances in conflict herewith

WHEREAS, in order to safeguard public safety, health, comfort and the general welfare of the people of New Orleans it is necessary that proper supervision and regulations be imposed on all persons, firms or corporations, who in any way desire to use the public streets, sidewalks, or other public places, or private or public halls for the conduct of any business or calling, or the holding of any meetings or public entertainment; therefore

SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That from and after the passage of this ordinance, every person, firm or corporation, who shall desire to use the public streets, sidewalks or public places for the conduct of any business or calling, or to hold meetings or rallies or public entertainments in private or public halls, shall first apply to and obtain from the Mayor of the City of New Orleans a permit according to the following schedule which permit shall in each instance state the occasion for which it is issued and the length of time for which said permit shall be operative, and which shall be paid for at the time of [illegible]

[illegible] by the [illegible]

[illegible] to the [illegible]

A—To sell Novelties, Candies, Cigars, Cigarettes, Cakes, Candy Floss, Popcorn, Peanuts, Fruit, Vegetables, Cut Flowers, Soft Drinks, Ice Cream, Ice Cream Bars, Sandwiches, Hot Dogs, Hot Tamales, Hot Coffee, Hot Tea, Hot Chocolate, Hot Soup, Hot Chili, Hot Barbecue, Hot Meat Pies, Hot Fish, Hot Oysters, Hot Shrimp, Hot Crabs, Hot Crawfish, Hot Gumbo, Hot Jambalaya, Hot Stew, Hot Roasted Meats, Hot Roasted Poultry, Hot Roasted Fish, Hot Roasted Oysters, Hot Roasted Shrimp, Hot Roasted Crabs, Hot Roasted Crawfish, Hot Roasted Gumbo, Hot Roasted Jambalaya, Hot Roasted

SECTION 5. BE IT FURTHER ORDAINED, ETC., That in order to [illegible] the City of New Orleans, [illegible] shall apply to the Mayor of the City of New Orleans for a permit for [illegible] and said permit for [illegible] shall be issued only after the following information shall have been received from the applicant:

A—[illegible] and address of [illegible]

B—Kind and character of the [illegible] goods, foods, or effects to be sold.

C—Location or route over which the peddler intends to sell or distribute his wares, provided that in no instance shall any person having a bad character be permitted to obtain a permit.

SECTION 3. BE IT FURTHER ORDAINED, ETC., That permits to [illegible] under the authority of this ordinance, shall be non-[illegible] and [illegible]

[illegible] non-transferable, either as to individuals or as to location.

SECTION 4. BE IT FURTHER ORDAINED, ETC., That the Mayor shall prescribe such other rules and regulations as to the form of application for permits and their issuance, as may be required to carry out the full intent and purpose of this ordinance.

SECTION 5. BE IT FURTHER ORDAINED, ETC., That the Mayor may designate a director of permits who, subject to the direction of the Mayor, shall function as the head of the Permit Division and who shall sign all permits. The Mayor may also designate such inspectors, clerks and other assistants that may be necessary for the proper conduct of the Permit Division and shall fix their salaries.

SECTION 6. BE IT FURTHER ORDAINED, ETC., That it shall hereafter be the mandatory duty of the Director of Permits to transmit, day by day as received by him, to the City Treasurer, all monies and fees received for the issuance of the aforesaid permits; and the City Treasurer upon the receipt of said monies and fees shall immediately deposit same in a special account to be kept separate and apart from the other funds of the City, to be designated as the "Permit Fund Account" from which special account disbursements shall hereafter be made by the City Treasurer as provided in this section of this ordinance.

It is hereby ordered that all monies and fees now on hand in the accounts kept by the Director of Permits heretofore collected by him for the issuance of permits, shall forthwith be transferred by the Director of Permits to the City Treasurer for deposit in the aforesaid account, provided however, that out of said monies and fees now on hand, and in the possession of the director of permits, there shall be retained by him the sum of five thousand ($5,000.00) dollars which amount shall then constitute the Contingent Fund of the Mayor to be expended by the Mayor at his discretion.

Whenever the said Contingent Fund of five thousand ($5,000.00) dollars herein ordered retained by the Director of Permits shall become exhausted or reduced to less than five thousand ($5,000.00) dollars, upon proper requisition made by the Director of Permits to the City Treasurer, duly approved by the City Auditor, the Director of Permits is authorized to warrant from, and the City Treasurer is authorized to pay out of the aforesaid "Permit Fund Account" an additional sum of five thousand ($5,000.00) dollars, or such additional sum as may be necessary to bring the Mayor's Contingent Fund again up to the sum of five thousand ($5,000.00) dollars and additional requisitions by the Director of Permits for similar amounts may be made thereafter under the same conditions aforesaid, whenever conditions require that the said Contingent Fund be replenished.

SECTION 7. BE IT FURTHER ORDAINED, ETC., That any person, firm and corporation violating the foregoing section of this ordinance or any of the regulations prescribed in order to carry out its true intent and purpose shall be subject to a fine of not more than twenty-five ($25.00) dollars or imprisonment for not more than thirty (30) days or both, at the discretion of the Judge hearing jurisdiction over such violation; and each offense shall constitute a separate violation.

SECTION 8. BE IT FURTHER ORDAINED, ETC., That Ordinances Nos. 14,294; 14,332; 14,434 and 15,347 C. C. S., and all other ordinances or part of ordinances in conflict with provisions of this ordinance be, and the same are hereby repealed.

All permits for fruit, fruits and vegetables shall first be approved by the Market Director.

(Adopted by the Commissioners Council of the City of New Orleans, Feb. 20, 1942.

G. E. WEAVER,
Clerk of Commissioners Council.

Approved Feb. 20, 1942.
ROBT. S. MAESTRI,
Mayor.

A True Copy:
M. E. WRIGHT,
Acting Secretary to the Mayor

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APPENDIX "B"

17,633

Mayoralty of New Orleans,
City Hall, June 7, 1949.
Calendar No. 18,430.

NO. 17,633 COMMISSION COUNCIL SERIES.

BY MAYOR MORRISON:

AN ORDINANCE to amend Section 1, Paragraph "P" of Ordinance No. 15,510 C. C. S., commonly known as the Mayoralty Permit Ordinance.

SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That Paragraph "P" of Section 1 of Ordinance No. 15,510 C. C. S., be, and the same is hereby amended to read as follows:

"P-1. To take and sell photographs on City streets or other public places where parties photographed willingly pose for picture and picture is developed on spot where taken and there delivered to parties photographed $ 5.00

"P-2 To take and sell photographs on City Streets or in any other public places in any other manner than that described in the preceding paragraph 250.00

Adopted by the Commission Council of the City of New Orleans, June 17, 1949.

G. S. WEAVER,
Clerk of Commission Council.

Approved June 17, 1949.

deLESSEPS S. MORRISON,
Mayor.

A true copy:
W. J. ERIKSON,
Secretary to the Mayor.

APPENDIX "C"

17,989

Mayoralty of New Orleans,
City Hall, December 29, 1950.
Calendar No. 17,501.
NO. 17,969 COMMISSION COUNCIL SERIES.
By Mayor Morrison:
AN ORDINANCE to amend the title, the preamble and Section 1 (as such Section was last amended by Ordinance No. 16,865, C. C. S.) of Ordinance No. 15,510, C. C. S., entitled,
"An Ordinance regulating and fixing the cost of permits to be issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors of merchandise, solicitors, canvassers, etc., for the holding of fish fries, parades, circuses and the holding of meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294, 14,302, 14,434 and 15,347, C. C. S., and any and all ordinances and parts of ordinances in conflict herewith."
SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That the title of Ordinance No. 15,510, C. C. S., be and the same is hereby amended to read as follows:
"AN ORDINANCE regulating and fixing the cost of permits to be issued to any person, firm, corporation, or partnership, operating merchandise vending machines, and other vendors of merchandise, solicitors, canvassers, etc., and for the holding of fish fries, parades, circuses, meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294, 14,302, 14,434 and 15,347, C. C. S., and any and all ordinances or parts of ordinances in conflict therewith.
SECTION 2. BE IT FURTHER ORDAINED, ETC., That the preamble of Ordinance No. 15,510, C. C. S., be and the same is hereby amended to read as follows:
"WHEREAS, in order to safeguard public safety, health, comfort and the general welfare of the people of New Orleans it is necessary that proper supervision and regulations be imposed on all persons, firms, corporations, or partnerships, who in any way desire to use the public streets, sidewalks, or other public places, or private places, or public halls for the conduct of any business or calling, or the holding of any meetings or public entertainment."
SECTION 3. BE IT FURTHER ORDAINED, ETC., That Section 1 (as such Section was last amended by Ordinance No. 16,865, C. C. S.) of Ordinance No. 15,510, C. C. S., be and the same is hereby amended as follows:

AMENDMENT NO. 1

Delete all of lines one (1) through fifteen (15), (both inclusive) and insert in lieu thereof the following:
"SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That from and after the passage of this ordinance, every person, firm, corporation, or partnership who shall desire to use the public streets, sidewalks or public places, or private places, or business establishments for the conduct of any of the business or calling hereinafter setforth, or to hold meetings or rallies, or public entertainments in private or public halls or places, shall first apply to and obtain from the Mayor of the City of New Orleans a permit according to the following schedule, which permit shall in each instance state the occasion for which it is issued and the date upon which it shall expire. Said permits shall be good for or be

ules."

AMENDMENT NO. 2

Delete all of paragraph "U" and insert in lieu thereof the following:
"U. To operate automatic coin vending machines (other than penny machines), selling candy, cigarettes, soft drink, or other articles of merchandise, per machine, per year $3.00
For penny vending machines, per machine, per year ... $2.50
Adopted by the Commission Council of the City of New Orleans, January 5, 1951.
G. S. WEAVER,
Clerk of Commission Council.
Approved January 5, 1951.
deLESSEPS S. MORRISON,
Mayor.
A true copy:
W. J. ELKSON,
Secretary to the Mayor.

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APPENDIX "D"

ORDINANCE "

CITY OF NEW ORLEANS

CITY HALL, NOV 18 1954, 1954

CALENDAR NO. 228

NO. 217 MAYOR COUNCIL SERIES

BY: ~~MR. FITZMORRIS~~ MR. DUFOURC MR. FITZMORRIS MR. CASSIBRY MR. MOORE

AN ORDINANCE to amend and re-ordain Ordinance No. 15,510 C.C.S., entitled: "AN ORDINANCE regulating and fixing the cost of permits issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors of merchandise, solicitors, canvassers, etc., for the holding of fish fries, parades, circuses and the holding of meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294, 14,302, 14,434 and 15,347 C.C.S , and any and all ordinances and parts of ordinances in conflict herewith," by adding an additional paragraph to Section 1 thereof, and repealing all ordinances, or parts of ordinances, in conflict herewith.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Section 1 of Ordinance No. 15,510 C.C.S., be and the same is hereby amended by adding an additional paragraph at the end of Section 1 thereof, to read as follows:

"In addition to the charges shown in the above schedule, each applicant shall be required to pay the sum of Twenty-Five Cents (25¢), for account of the Police Pension Fund, which additional sum shall be transmitted by the Collector of Revenue, day by day as collected by him, to the Chief of Bureau of the Treasury. At the end of each month the Chief of Bureau of the Treasury shall remit all such sums so collected for account of the Police Pension Fund to the Board of Trustees, Police Pension Fund, City of New Orleans.

SECTION 2. That all ordinances, or parts of ordinances, contrary to or in conflict herewith, be and the same are hereby repealed.

Adopted by the Council of the City of New Orleans DEC 16 1954

PRESIDENT OF COUNCIL

Delivered to the Mayor

on DEC 17 1954

APPROVED:

Returned by the Mayor

on DEC 21 1954 at 11:00 AM

~~DISAPPROVED:~~ 21 Dec 54

CLERK OF COUNCIL

MAYOR

MEMORANDUM TO CALENDAR ORDINANCE 228

Notice required by Sec. 3-113(5) of the City Charter should be published on this ordinance, giving summary thereon as follows:

Said ordinance will require all applicants to pay the sum of twenty-five cents for account of the Police Pension Fund, in addition to the cost of permits required by Ordinance 15,510, C.C.S. for the purpose of operating in and on public streets and other public places, legal, coin-operated machines, of vendors of merchandise, solicitors, canvassers, etc., and for fish fries, parades, meetings, rallies and entertainments, etc.

APPENDIX "E"

CITY OF NEW ORLEANS

CITY HALL, JANUARY 28, 1965

CALENDAR NO. 3261

NO. 3027, MAYOR COUNCIL SERIES

BY: COUNCILMAN KELLY

AN ORDINANCE amending Section 46-1 of Ordinance No. 828, M.C.S., known as the Code of the City of New Orleans, by adding paragraph (40) thereto and by adding Section 46-7 to Chapter 46 of said Code, relative to permit fees of $250.00 to be paid by transient merchants doing business in hotel rooms or other temporary quarters and regulating the conduct of said business.

SECTION I. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Section 46-1 of Ordinance 828, M.C.S., be and is amended by adding Paragraph (40) thereto, reading as follows:

(40) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business, hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof, per location, per year, $250.00

SECTION 2. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Chapter 46 of Ordinance 828, M.C.S., be and is amended by adding the following Section thereto, to-wit:

SECTION 46-7. Permit for sales at retail in temporary quarters.

The words "transient vendors, canvassers, solicitors and merchants" as used herein, shall be defined as meaning all persons engaging in the sale at retail of goods, wares and merchandise within the corporate limits of the City of New Orleans and who, for the purpose of carrying on such business, hires, leases, or occupies, either in whole or in part, a room, building, or other structure for the exhibition and sale at retail of such goods, wares, and merchandise, and with the intention to close out or discontinue such business within a period of one year from the date of the commencement thereof.

The provisions of this Section shall not apply to any person selling fruits, vegetables or farm products when raised by such vendor, or to any person who conducts a sale pursuant to statute or court order.

I. It shall be unlawful for any transient vendor canvasser, solicitor or merchant to sell at retail or offer for sale within the corporate limits at retail of the City of New Orleans any goods, wares or merchandise except in accordance with the provisions of this section.

2. Every transient vendor, canvasser, solicitor or merchant subject to the provisions of this section, before selling, or offering for sale, within the City of New Orleans any goods, wares or merchandise, either from stock or by sample, shall make application to the Director of Finance of the City of New Orleans for a permit to carry on such business in the City of New Orleans. Such application shall be in writing, duly sworn to by the applicant in person, or by the applicant's duly authorized representative, and shall contain the following information.

(a) The name of the person having the management or supervision of such business during the time it shall be carried on in the City of New Orleans; the address of such person while engaged in such business in the City of New Orleans, and the capacity in which such person will act; that is, whether as proprietor or agent, and the name of the person for whose account the business shall be carried on, and if a corporation, under the laws of what state the same is incorporated.

(b) Three business references.

(c) The place where the owner of such business conducts or maintains an established place of business.

(d) The place in the City of New Orleans where it is proposed to carry on such business, and the length of time during which it is expected or proposed that such business shall be conducted.

(e) The place, other than the permanent place of business of the owner, where such transient vendor, canvasser, solicitor or merchant within the six months next preceeding the date of such application conducted or carried on a temporary or transitory business, stating the nature thereof and giving the post office and street addresses of any building or office in which such business was so conducted.

(f) A statement of the nature, character and quantity of the goods, wares or merchandise to be sold or offered for sale in the City of New Orleans and the invoice value of such goods, and a statement as to whether the goods are to be sold from stock in possession or by sample, and whether the same are to be sold at auction or public outcry, or by personal solicitation, or otherwise. Bills or invoices of purchase of goods shall be attached to the application when

BEST COPY AVAILABLE

(g) A brief statement of the nature and character of the advertising done or to be done in order to attract customers, and, if required by the Director of Finance, copies of all advertising, whether by handbills, circulars, newspaper advertising or otherwise, shall be attached to the application as exhibits thereto.

(h) The number, either of arrests or convictions of misdemeanors or crimes, and the nature of the offenses for which arrested or convicted, if any.

(i) To the application must be appended a letter from the firm for which the applicant purports to do business, authorizing the applicant to act as its representative.

3. It shall be unlawful for any transient vendor, solicitor, canvasser or merchant to engage in business until he shall have first applied to and obtained a permit to engage in business, in accordance with the provisions of this Section and especially the provisions of paragraph 2 of this Section, and has paid all taxes and fees required by law for the transaction of such business in the City of New Orleans. It shall be the duty of the Director of Finance to issue such permit in writing which shall state the date same is issued, the nature of the business authorized to be carried on and the expiration date of said permit, the place where such business may be carried on under such permit, and the name of the person or persons authorized to carry on the same, which permit shall be signed by the Director of Finance or his authorized representative. The permit so issued shall be posted conspicuously in the place of business named therein. In the event the person applying for such permit shall desire to do business in more than one place, then separate permits shall be applied for and issued for each place of business, and shall be posted conspicuously in each place of business, and the fee herein provided for shall be paid for each permit.

4. The violation of any of the provisions of this Section, or the doing of business otherwise than provided in the application and permit issued thereon, shall constitute a forfeiture of the permit, and the Director of Finance shall suspend the operation of such permit not to exceed ten days, and upon the request of the holder of such permit, grant a hearing and rule upon such forfeiture. Should the Director of Finance find that there has been a violation of the condition of the permit or of this Section, working a forfeiture of the permit, such permit shall be immediately forfeited, surrendered, and cancelled. A forfeiture of the permit shall not entitle the transient vendor, canvasser, solicitor or merchant to any refund of taxes or fees paid.

5. Immediately upon issuing any permit provided for in Section 46-7, the Director of Finance or any of his deputies shall at any time thereafter and at all reasonable hours make an inspection of the place of business as provided in said permit and shall determine whether or not such business is carried on or conducted by the person or persons and in the manner provided in the permit, and the application upon which the permit was issued, and whether the permit is posted as provided by Section 46-7, and whether or not the other provisions of said Section

BEST COPY AVAILABLE

6. In order to defray the cost and expense of the enforcing of this Section, every such transient vendor, canvasser, solicitor or merchant subject to the provisions of this Section, shall, in addition to all taxes, privileges and fees required by law to be paid for the transacting of such business in the City, pay a permit fee of $250.00, which shall be paid to the Director of Finance, or to his designated deputy. All permit fees collected under this Section 46-7 shall be transmitted to the City Treasurer in accordance with Section 46-5 of this ~~Section~~ Chapter.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS MAR 4 - 1965

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor

on MAR 4 - 1965

APPROVED: MAR 5 - 1965

~~DISAPPROVED~~

Returned by the Mayor

on MAR 5 - 1965

at 11:00 A.M.

V. H. SCHIRO
M A Y O R

ROGER L. SARRAT
CLERK OF COUNCIL

APPENDIX "F"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, MAY 28, 1970

CALENDAR NO. 4712

NO. 4346 MAYOR COUNCIL SERIES

BY: COUNCILMAN DiROSA

AN ORDINANCE to amend Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, by adding new paragraph (41) to Section 46-1 relative to permits required for various callings or occasions.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by adding new paragraph (41) to Section 46-1.

"(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or unnatural sex acts or otherwise appeal to sexually prurient interests and which establishments cater exclusively to adults $10,000.00

SECTION 2. The provisions of this Ordinance shall become effective immediately and the Director of Finance shall collect one-half (½) year permit fee for the remainder of 1970 and

a full year permit fee each year thereafter."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS JUL 16 1970

JAMES A. MOREAU
PRESIDENT OF THE COUNCIL

Delivered to the Mayor on JUL 16 1970

Approved: JUL 21 1970
(Disapproved)

MOON LANDRIEU
MAYOR

Returned by the Mayor
on JUL 21 1970 at 9:00 A.M.

ROGER L. SARPAT
CLERK OF COUNCIL

CRS 70-137

mc

APPENDIX "G"

CITY OF NEW ORLEANS

CITY HALL, JULY 16, 1970

CALENDAR NO. 4744

NO. 4359 MAYOR COUNCIL SERIES

BY: COUNCILMAN MOREAU

AN ORDINANCE to amend Chapter 46-1 of Ordinance Number 823 M.C.S., known as the Code of the City of New Orleans, relative to a schedule of fees for certain permits, by deleting Paragraph (1) in its entirety.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46-1 of Ordinance Number 823 M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Paragraph (1) in its entirety and substituting in lieu thereof the following:

To sell novelties, etc. on the city streets:

(1) ~~There is no occupational license tax required~~

A. For a fixed location to sell novelties, etc.:

(a) During the Mardi Gras season beginning on January 6 through Mardi Gras Day .... $ 50.00

(b) ~~For one half year~~

(c) ~~For one year~~

b
(d) There shall be a $50.00 deposit on these permits to guarantee payment of sales tax at the end of the Mardi Gras season.

c
(e) A specific location can be assigned, but not guaranteed by the City.

d
(f) These permits shall be non-transferable.

B. For moving vendors ~~to sell novelties, etc. on~~ the city streets:

(a) During the Mardi Gras season beginning on January 6 through Mardi Gras Day .... $ 25.00

(b) xxxx

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, JULY 16, 1970

CALENDAR NO. 4745

O. 4360 MAYOR COUNCIL SERIES

Y: COUNCILMAN MOREAU

AN ORDINANCE to amend Chapter 46-1 of rdinance Number 828 M.C.S., known as the ode of the City of New Orleans, relative to schedule of fees for certain permits, by eleting Paragraph (14) in its entirety.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46-1 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, relative to a schedule of fees for certain permits, be and i: hereby amended by deleting Paragraph (14) in its entirety.

DOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS AUG 6 1970

JAMES A. MOREAU

PRESIDENT OF THE COUNCIL

Delivered to the Mayor on AUG 6 1970

Approved: AUG 7 1970

MOON LANDRIEU

MAYOR

Returned by the Mayor

on AUG 7 1970 at 9:30 A.M.

ROGER L. SARRAT

CLERK OF COUNCIL

CRS 70-76

APPENDIX "I"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, NOVEMBER 12, 1970

CALENDAR NO. 4821

. 4439 MAYOR COUNCIL SERIES

: COUNCILMAN JOHN D. LAMBERT, JR. (BY REQUEST)

AN ORDINANCE to amend Ordinance Number 828, M.C.S. known as the Code of the City of New Orleans, Chapter 46, elative to a schedule of fees for certain permits, by edrafting Section 46-5 and Sub-sections (1) through (40) f Section 46-1, deleting Section 46-6 and adding ections 46-14 and 46-15.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46 of Ordinance Number 828, M. C. S., known as the Code of the City of New Orleans, be and is herely amended by deleting Section 46-5 in its entirety and substituting in lieu thereof the following:

SECTION 46-5. FEES TO GO TO GENERAL FUND

The Collector of Revenue shall transmit, day by day, as collected by him, to the Bureau of Treasury all moneys and fees received for the issuance of the permits required by this chapter. The Bureau of the Treasury upon the receipt of such moneys and fees shall immediately depoist them in the General Fund.

SECTION 2. That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Sub-sections (1) through (40) of Section 46-1 in their entirety and substituting in lieu thereof the following:

SECTION 46-1

(1) To sell the following items on city streets during Mardi Gras season beginning January 6 thru Mardi Gras Day:

A. For a fixed location

(a)(1)To sell novelties.....$50.00

(2)To sell candies,nuts and confections..$50.00

(3)To sell sandwiches and soft drinks....$50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras season.

(c) A specific location can be assigned but not guaranteed by theCity.

B. For moving locations

(1) To sell novelties.....$25.00

(2) To sell candies,nuts and confections.$25.00

(3) To sell sandwiches and soft drinks...$25.00

(2) To sell novelties on the city streets other than during the Mardi Gras season $25.00

~~(a) Per sales outlet, for one-half year.....$12.50~~

~~(b) Per sales outlet, for one year.....$25.00~~

~~(c) For purposes of this section, one-half year may include January 2 or January 3 whenever the Sugar Bowl Football game is played.~~

(3) To sell candies, nuts and confections on foot or from pushcarts or other vehicles on city streets or public places other than during the Mardi Gras season.

~~(a) Per sales outlet, per half-year.....$12.50~~

~~(b) Per sales outlet, per year.....$25.00~~

~~(c) For purposes of this section one-half year may include January 2 or January 3 whenever the Sugar Bowl Football game is played.~~

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.

(a) Per sales outlet, per half-year.....$12.50

(b) Per sales outlet, per year.....$25.00

(c) For purposes of this section one-half year may include January 1 or January 2, whenever the Sugar Bowl Football game is played.

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets or public places other than during the Mardi Gras season.

per sales outlet, per year.....$25.00

(6) To peddle cooked food, cakes, pies, etc. other than during the Mardi Gras season.

(a) Per sales outlet, per half-year.....$25.00

(b) Per sales outlet, per year.....$50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places

$25.00

per sales outlet, per year.....$10.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles

per vehicle, per year.....$50.00

(9) To sell home-manufactured articles or home-grown products on foot

$25.00

per year.....$5.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square

$40.00

per year.....$100.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc. on city streets or public places

$15.00

per year.....$ 5.00

(12) To sell tickets to supper to be held in private homes

per event.....$15.00 ~~$5.00~~

(13) Demonstrations of food products or devices in public places or markets, etc.

per engagement.....$25.00

(14) To distribute samples, canvass on city streets or from house to house

per year

(a) for crew manager.....$25.00 ~~$15.00~~

(b) for each crew member.....$15.00 ~~$5.00~~

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property

(a) per year.....$100.00 ~~$60.00~~

(b) per month.....$15.00 ~~$7.50~~

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed

per year.....$25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph

per year.....$250.00

(18) To operate a hand organ in the city streets

per year.....$15.00 ~~$5.00~~

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Sections 51:31 to 51:41 of the Revised Statutes of Louisiana

per sale.....$75.00

(20) Weighing devices, etc., on sidewalks or in public places

per nickel machine, per year ..... $25.00 ~~$5.00~~

per penny machine, per year ..... $15.00 ~~$2.50~~

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted

per month.....$25.00

(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis per year in addition to license $100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.

$100.00

per year ..... ~~$50.00~~

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:

(a) Admission not more than 75¢, per event..$15.00 ~~$5.00~~

(b) Admission more than 75¢, per event .....$25.00 ~~$10.00~~

(25) For amateur and professional prizefights or boxing and wrestling contests:

(a) Admission not more than 75¢, per event..$15.00 ~~$5.00~~

(b) Admission more than 75¢, per event .....$25.00 ~~$10.00~~

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected

(a) Admission not more than 75¢ or by invitation

per event.....$15.00 ~~$10.00~~

(b) Admission more than 75¢, per event..... $25.00 ~~$15.00~~

$25.00

(27) For Carnival Balls $50.00

(28) For philarmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner

(a) Admission not more than 75¢ or by invitation per event $15.00 $5.00 $25.00

(b) Admission more than 75¢ $10.00

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged per year $50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted per year $25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner per year $100.00

(32) For dancing when admission is charged: $15.00

(a) Admission not more than 75¢, per event.. $5.00 $25.00

(b) Admission not more than $1.99, per event $10.00 $50.00

(c) Admission $2.00 or more, per event.... $25.00

(33) For a private dance in a public hall $15.00

per event ..... $ 1.00

(34) To give a rummage sale per event ..... $ 5.00

(35) For any trancient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such

goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof per location, per year $250.00

SECTION 3, That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Section 46-6 in its entirety.

SECTION 4. That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by adding Section 46-14 as follows:

SECTION 46-14 PEDDLING NOVELTIES, SOUVENIRS AND FOODS - PROHIBITED NEAR SCHOOLS

It shall be unlawful to sell novelties, souvenirs, candies, nuts, confections, ice cream, ice cream bars, hot tamales, hot dogs, sandwiches, soft drinks, cakes, pies, fruits and vegetables on the city streets within two (2) blocks of any elementary Or secondary school when said school is in session.

SECTION 5. That Chapter 46 of Ordinance Number 828, M.C.S., known as the code of the City of New Orleans, be and is hereby amended by adding Section 46-15 as follows:

SECTION 46-15 PENALTIES AND INTEREST

All mayoralty permits must be obtained prior to the occasion for which it is issued. Should applicant fail to secure the permit prior to the occasion, the following penalties and interest shall apply:

A. Mayoralty permits acquired on a regular yearly basis shall become delinquent February 1 of that year. If the regular yearly permit is not obtained by February 1 of that year, there shall be interest added to the fee at the rate of eight per centum (8%) per annum from the due date until paid.

In addition to the interest that may be so added, a penalty shall be imposed at the rate of twenty per centum (20%)of the fee if the failure to obtain said permit is for not more than thirty days and with an additional twenty per centum (20%) for each additional thirty days or fraction thereof during which the failure continues, not to exceed sixty per centum (60%) of the amount of the fee.

B. Mayoralty permits acquired on other than a regular yearly basis shall become delinquent at the start of the occasion. If the permit has not been obtained prior to the occasion, there shall be interest added to the fee at the rate of eight per centum (8%) per annum from due date until paid. In addition to the interest that may be so added, a penalty shall be imposed at the rate of fifty per centum (50%) of the fee.

C. The Director of Finance may, at his discretion, for good cause, waive, in whole or in part, any of the peralties herein provided.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS DEC 18 1970

JOSEPH V. DI ROSA

PRESIDENT OF THE COUNCIL

Delivered to the Mayor on DEC 21 1970

Approved: DEC 22 1970

MOON LANDRIEU

MAYOR

Returned by the Mayor

on DEC 22 1970 at 11:30 A.M.

ROGER L. SARRAT

CLERK OF COUNCIL

APPENDIX "J"

APPENDIX "J"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, MAY 6 1971

CALENDAR NO. 1967

NO. 4555 MAYOR COUNCIL SERIES

BY: COUNCILMAN LAMBERT (By request)

AN ORDINANCE to amend/Ordinance Number 828, M.C.S., and reordain Section 46-1 of known as the Code of the City of New Orleans ~~by amending and reordaining Section 46-1~~ relative to a schedule of fees for certain permits and regulations governing these permits. and to amend Chap 46 of said Code by adding thereto a new section, Section 46-16 relativ to penalty for failure to comply w the regulations.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS that Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding to Section 46-1 after the words "the date upon which it will expire" the following:

and shall be in addition to any other tax or license to which permittee may be liable.

SECTION 2. That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding to Section 46-1, subsection (1) A. (b) the following: This deposit will be forfeited 30 days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans.

SECTION 3. That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding to Section 46-1, subsection (1) A. the following:

SECTION 46-1

(1) A.(d) Vendors at fixed locations may set up on public streets, property or right-of-ways their vehicles or stands during parade time only. Parade time shall be defined as that time commencing two (2) hours before the start of a parade and ending two (2) hours after the passing of the parade. This provision will not apply when there is more than one parade on any Calendar Day in which case vendor must move two (2) hours after the end of the last parade for that Calendar Day.

(e) Where the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the city shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width.

(h) All vendors selling from fixed locations shall have the mayoralty permit as provided for in this section publicly displayed by the permittee at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras permits for vendors from fixed locations whether on private or public property shall be issued for the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. to the river side of Dauphine St.

SECTION 4, That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans is hereby further amended by adding to Section 46-1, subsection (1) B., the symbol (a) in front of the words "For Moving Vendors" and by adding subsections as follows:

SECTION 46-1

(1) B. (b) All moving vendors must keep moving except when making a sale.

(c) The Department of Finance shall provide at their cost moving vendors with a Mardi Gras Mayoralty Badge which must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this chapter. A permittee shall be required to issue a Mardi Gras Mayoralty badge to each of his agents or employees and failure to do so shall constitute a violation of this Chapter by the permittee.

(d) No Mardi Gras moving vendors shall be permitted in the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. and to the river side of Dauphine St.

SECTION 5. That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby further amended by deleting (6) (a) in its entirety and by deleting the symbol (b) in subsection (6) in front of the words "Per sales outlet".

SECTION 6. That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding Section 46-16 as follows:

PENALTY.

SECTION 46-16. Persons who fail to obtain said permit or to comply with any of the regulations contained in this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the punishment prescribed in Section 1-6 of the Code of the City of New Orleans. A permittee so convicted shall forfeit said permit and not be entitled to a refund of the fees paid therefor.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS MAY 13 1971

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on MAY 13 1971

Approved: MAY 17 1971

MOON LANDRIEU
MAYOR

Returned by the Mayor on MAY 17 1971 at 1:30 P.M.

ROGER L. SARRAT
CLERK OF COUNCIL

APPENDIX "K"

ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS

CITY HALL, SEPTEMBER 23, 1971
CALENDAR NO. 5112

No. 4744 MAYOR COUNCIL SERIES
BY COUNCILMAN DI ROSA

AN ORDINANCE to amend Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans by amending and re-ordaining the first paragraph of Section 46-1 and by adding subsection (36) to Section 46-1 relative to mayoralty permits for vendors of newspapers and magazines and vendors of flowers and to add Section 46-1.1 relative to the validity of certain mayoralty permits in the Vieux Carre.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS THAT Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by deleting the first paragraph of Section 46-1 in its entirety and inserting in lieu thereof the following: "Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainment in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however, are not valid in the Vieux Carre except as provided in Section 46-1.1 of this Chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:"

SECTION 2. THAT Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding Section 46-1 (36) to read as follows:

"SECTION 46-1.

(36) To sell flowers on the city sidewalks or streets
Per sales outlet, per year.....$50.00

SECTION 3. THAT Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by adding Section 46-1.1 as follows:

"SECTION 46-1.1. PERMITS VALID IN THE VIEUX CARRE Permits designated by the following numbers of Section 46-1 are valid within the area designated as the Vieux Carre, which is defined as the area bounded by the River, the Uptown side of Esplanade Avenue, the River side of North Rampart Street and the Lower side of Iberville Street, to wit: Sections (5), (10), (12), (19), (21), (24) through and including (36) and (41).

SECTION 4. THAT the effective date of this ordinance shall be January 1, 1972.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS Dec. 8, 1971.

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on Dec. 8, 1971.

Approved: Dec. 9, 1971

MOON LANDRIEU
MAYOR

Returned by the Mayor

on Dec. 9, 1971 at 9:30 A.M.

ROGER L. SARRAT
CLERK OF COUNCIL

cc: 183
sah

APPENDIX "L"

ORDINANCE
(AS AMENDED)

CITY OF NEW ORLEANS

CITY HALL, SEPTEMBER 23, 1971

CALENDAR NO. 5113

NO. 4746 MAYOR COUNCIL SERIES

BY: COUNCILMAN DI ROSA

AN ORDINANCE to amend Chapter 14 of Ordinance Number 828 M. C. S., known as the Code of the City of New Orleans, by adding Section 14-40, relative to solicitations in the Vieux Carre.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Chapter 14 of Ordinance Number 828 M. C. S., known as the Code of the City of New Orleans be and the same is hereby amended by adding Section 14-40 to read as follows:

SECTION 14-40

SOLICITATIONS FOR CHARITY, ETC., PROHIBITED IN VIEUX CARRE.

It shall be unlawful to solicit money, subscriptions, advertising, gifts in kind or contributions or sell tickets, or magazines for any charitable, religious, educational or benevolent purposes as herein set forth on the sidewalks, streets, malls or squares in the section known as the Vieux Carre which is defined as the area bounded by the River, the Uptown side of Esplanade Avenue, the River side of North Rampart Street and the Lower side of Iberville Street..

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS DEC. 15, 1971

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on DEC. 15, 1971

Approved: DEC. 17, 1971

MOON LANDRIEU
M A Y O R

Returned by the Mayor

On DEC. 17, 1971 at 11:00 A.M.

ROGER L. SARRAT
CLERK OF COUNCIL

CC 71-191

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS Dec. 8, 1971.

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on Dec. 8, 1971.

Approved: Dec. 9, 1971

MOON LANDRIEU
MAYOR

Returned by the Mayor

on Dec. 9, 1971 at 9:30 A.M.

ROGER L. SARRAT
CLERK OF COUNCIL

cc: 183
sah

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ORDINANCE

CITY OF NEW ORLEANS

CITY HALL April 6, 1972

CALENDAR 5244

NO. 4822 MAYOR COUNCIL SERIES

BY: COUNCILMAN DI ROSA

AN ORDINANCE to amend Chapter 46 of Ordinance No. 828 M.C.S. known as the Code of the City of New Orleans relative to vendors.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46 of Ordinance No. 828 M.C.S. known as the Code of the City of New Orleans, be and is hereby amended by amending Section 46-1.1 to add the following thereto:

"Vendors who have continuously operated the same business within the Vieux Carre under the authority of this Chapter for eight or more years prior to January 1, 1972 may obtain a valid permit to operate such business within the Vieux Carre."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS APR 13 1972

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on APR 13 1972

Approved: APR 17 1972

MOON LANDRIEU
MAYOR

Returned by the Mayor

APR 17 1972 at 3-30 PM

ROGER L. SARRAT
CLERK OF COUNCIL

CRS 72-152

at

APPENDIX "N"

CITY OF NEW ORLEANS

CITY HALL August 31, 1972

CALENDAR NO. 5373

NO. [illegible] MAYOR COUNCIL SERIES

BY: COUNCILMAN DIROSA

AN ORDINANCE to amend Section 46-1.1. of Chapter 46 of Ordinance Number 828 M. C. S., known as the Code of the City of New Orleans, relative to permits valid in the Vieux Carre.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Section 46-1.1. of Chapter 46 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, be and the same is hereby amended and reordained to read as follows:

"Section 46-1.1. Permits valid in the Vieux Carre. Permits designated by the following numbers of Section 46-1 are valid within the area designated as the Vieux Carre, which is defined as the area bounded by the river, the uptown side of Esplanade Avenue, the river side of North Rampart Street and the lower side of Rhonville Street, to wit: Sections (10), (12), (13), (21), (24) through and including (35) and (41)."

"Vendors who have continuously operated the same business within the Vieux Carre under the authority of this Chapter for eight or more years prior to January 1, 1972 may obtain a valid permit to operate such business within the Vieux Carre."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS SEP 21 1972

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on SEP 21 1972

Approved: SEP 28 1972
[illegible]

MOON LANDRIEU
MAYOR

Returned by the Mayor on
SEP 28 1972 at 11-45 PM

CAROL L. BREAUX
ACTING CLERK OF COUNCIL

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APPENDIX "O"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL February 8, 1973

CALENDAR NO. 5537

NO. 5085 MAYOR COUNCIL SERIES

BY: COUNCILMAN DIROSA (BY REQUEST)

AN ORDINANCE to amend Chapter 46 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, by amending Section 46-1, relative to Mayoralty Permits for Vendors during the Mardi Gras Season.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS THAT Chapter 46 of the Ordinance #828M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Section 46-1 (1) in its entirety and inserting in lieu thereof the following:

SECTION 46-1

(1) A. Definitions:

1. "Mardi Gras Season" is defined as those days and nights commencing eleven (11) days before Mardi Gras and continuing until midnight on Mardi Gras day.

2. "Parade Route" is defined as that area extending one (1) city block in either direction of the streets used by the various parades while the parade is in progress.

3. "Parade Time" is defined as that time commencing two (2) hours before the starting time of a parade and ending two (2) hours after the passing of a parade, but no vendor shall sell or display his wares within the Central Business District which is defined as the area bounded by the River, Esplanade Avenue, Claiborne Avenue and Howard Avenue, prior to 6:00 p.m. on weekdays, except Mardi Gras Day. On weekends and on Mardi Gras Day when there is more than one parade on any Calendar Day the vendor must move two (2) hours after the end of the last parade for that Calendar day.

4. "Vehicle" is defined as a conveyance which is licensed by the Motor Vehicle Division of the Louisiana State Department of Safety.

B. To sell the following items on City Streets along the designated "Parade Route" during"Mardi Gras Season":

1. For a Fixed Location:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages). $50.00
(2) Candy, nuts and confections $50.00
(3) Novelties . . . . . $50.00.

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras Season. This deposit will be forfeited thirty (30) days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, may set up their vehicles during "Parade Time" only.

(e) When the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the City shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance #828 M.C.S., Code of the City of New Orleans relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width. Vendors must sell and display from a "vehicle"; no stands,card tables or the like shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(h) All vendors selling from fixed locations shall have the Mayoralty Permit as provided for in this section publicly displayed at his place of business and failure to do so shall constitute a violation of this Chapter.

(i) No Mardi Gras Mayoralty permits shall be issued for vendors from fixed locations on public streets, sidewalks, alleys, parks or squares in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(j) All applicants of Mardi Gras Mayoralty Permits to sell food and/or drinks on public or private property must show proof of compliance with all regulations and requirements of the City Board of Health and the Departmen of Fire, Fire Prevention Bureau before permit can be issue

2. For Moving Locations:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) . . . . . 25.00 ~~$50.00~~

(2) Candy, nuts and confections . . . . . ~~$50.00~~

(3) Novelties . . . . . 25.00 ~~$50.00~~

(b) There shall be a $25.00 deposit on each permit to guarantee payment of sales tax as provided in Section 56-41, of Ordinance #828, M.C.S., Code of the City of New Orleans at the end of the Mardi Gras Season. This deposit will be forfeited 30 days after Mardi Gras, if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales and use tax in accordance with Chapter 56 of Ordinance #828 M.C.S, Code of the City of New Orleans.

(c) All moving vendors must keep moving except when making a sale. No stands, card tables or the like, except hand-carried displays, shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(d) For each permit issued one (1) Mardi Gras Mayoralty Badge with a corresponding number shall be purchased by the permittee from the Department of Finance, which badge must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this Chapter.

(e) Mardi Gras Mayoralty Permits for moving locations shall be invalid in the Vieux Carre as defined in Section 65-6 of Ordinance 828, M.C.S., Code of the City of New Orleans.

(f) Mardi Gras Mayoralty Permits for moving locations shall only be valid during "Parade Time" along designated "Parade Routes".

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS February 15, 1973

JAMES A. MOREAU
PRESIDENT OF THE COUNCIL

Delivered to the Mayor On Feb. 15, 1973

Approved: February 19, 1973

MOON LANDRIEU
MAYOR

Returned by the Mayor

Feb. 19, 1973 at 3:20 P.M.

JOSEPH C. PETERSON
CLERK OF COUNCIL

APPENDIX "P"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, February 8, 1973

CALENDAR NO. 5538

NO. 5086 MAYOR COUNCIL SERIES

BY: COUNCILMEN DI ROSA AND DUPUY

An Ordinance to amend Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans, by amending and reordaining Section 46-1 relative to permits.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS That Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by amending and reordaining the first paragraph of Section 46-1 to read as follows: "Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however, are not valid within the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South, except as provided in Section 46-1.1 of this Chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:"

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS February 15,1973

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on February 15, 1973

Approved:
Rxxxxxxxxxxx February 19, 1973

MOON LANDRIEU
MAYOR

Returned by the Mayor

on February 19,1973 at 3:20 P.M.

JOSEPH C. PETERSON
CLERK OF COUNCIL

APPENDIX "Q"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, FEBRUARY 8, 1973

CALENDAR No. 5539

NO. 5087 MAYOR COUNCIL SERIES

BY: COUNCILMEN DI ROSA AND DUPUY

An Ordinance to amend Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans by amending and reordaining Section 46-1.1 relative to Permits valid within the Central Business District.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans be and is hereby amended by amending and reordaining Section 46-1.1 to read as follows:

"SECTION 46-1.1 PERMITS VALID IN THE CENTRAL BUSINESS DISTRICT. Permits designated by the following Subsections of Section 46-1, Subsections (1), (10), (12), (19), (21), (24), through and including (36), are valid within that area of the Central Business District bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South. Vendors who have continuously operated the same business within that area under the authority of this Chapter for eight or more years prior to January 1, 1972 may obtain a valid permit to operate such business within that area."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS February 15,1973

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on February 15, 1973

Approved:
XXXXXXXXXXX February 19, 1973

MOON LANDRIEU
MAYOR

Returned by the Mayor

on February 19,1973 at 3:20 P.M.

JOSEPH C. PETERSON
CLERK OF COUNCIL

APPENDIX "R"

CHAPTER 46

PERMITS[1]

Section 46-1. Permits required for various callings or occasions; schedule of fees therefor.[2]

Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however are not valid within the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue, on the North and Howard Avenue on the South, except as provided in Section 46-1.1 of this chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:

(1) A. Definitions:

1. "Mardi Gras Season" is defined as those days and nights commencing eleven (11) days before Mardi Gras and continuing until midnight on Mardi Gras day.

2. "Parade Route" is defined as that area extending one (1) city block in either direction of the streets used by the various parades while the parade is in progress.

3. "Parade Time" is defined as that time commencing two (2) hours before the starting time of a parade and ending two (2) hours after the passing of a parade, but no vendor shall sell or display his wares within the Central Business

1. For charter provisions with respect to permits, including a definition of "permit" as there used, see Char., §§ 4-701 and 4-702. For provisions requiring a permit for engaging in various occupations or undertakings dealt with in the other chapters hereof, see those chapters.

2. For licenses on other coin operated machines, see Chapter 16, Coin Operated Machines.

District which is defined as the area bounded by the River, Esplanade Avenue, Claiborne Avenue and Howard Avenue, prior to 6:00 p.m. on weekdays, except Mardi Gras Day. On weekends and on Mardi Gras Day when there is more than one parade on any calendar day the vendor must move two (2) hours after the end of the last parade for that calendar day.

4. "Vehicle" is defined as a conveyance which is licensed by the Motor Vehicle Division of the Louisiana State Department of Safety.

B. To sell the following items on city streets along the designated "parade route" during Mardi Gras Season:

1. For a fixed location:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages)	$50.00
(2) Candy, nuts and confections	50.00
(3) Novelties	50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras Season. This deposit will be forfeited thirty (30) days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, may set up their vehicles during "parade time" only.

(e) When the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the

City shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance #828, M.C.S., Code of the City of New Orleans, relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width. Vendors must sell and display from a "vehicle"; no stands, card tables or the like shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(h) All vendors selling from fixed locations shall have the Mayoralty Permit as provided for in this section publicly displayed at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras Mayoralty Permits shall be issued for vendors from fixed locations on public streets, sidewalks, alleys, parks or squares in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(j) All applicants for Mardi Gras Mayoralty Permits to sell food and/or drinks on public or private property must show proof of compliance with all regulations and requirements of the City Board of Health and the Department of Fire, Fire Prevention Bureau before permit can be issued.

2. For Moving Locations:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) $25.00

(2) Candy, nuts and confections ... 50.00
(3) Novelties 50.00

(b) There shall be a $25.00 deposit on each permit to guarantee payment of sales tax as provided in Section 56-41, of Ordinance #828, M.C.S., Code of the City of New Orleans, at the end of the Mardi Gras Season. This deposit will be forfeited 30 days after Mardi Gras, if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) All moving vendors must keep moving except when making a sale. No stands, card tables or the like, except hand-carried displays shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(d) For each permit issued one (1) Mardi Gras Mayoralty Badge with a corresponding number shall be purchased by the permittee from the Department of Finance, which badge must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this Chapter.

(e) Mardi Gras Mayoralty Permits for moving locations shall be invalid in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(f) Mardi Gras Mayoralty Permits for moving locations shall only be valid during "parade time" along designated "parade routes".

(2) To sell novelties on the city streets other than during the Mardi Gras season.
Per sales outlet, for one year ..... $ 25.00

(3) To sell candies, nuts and confections on foot or from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(5) To sell hot tamales and or hot dogs on foot or from push carts on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(6) To peddle cooked food, cakes, pies, etc., other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places.
Per sales outlet, per year ..... $ 25.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles.
Per vehicle, per year ..... $ 50.00

(9) To sell home-manufactured articles or home-grown products on foot.
Per year ..... $ 25.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square.
Per year ..... $ 40.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc., on city streets or public places.
Per year ..... $ 15.00

(12) To sell tickets to supper to be held in private homes.
Per event ..... $ 15.00

(13) Demonstrations of food products or devices in public places or markets, etc.
Per engagement ..... $ 25.00

(14) To distribute samples, canvass on city streets or from house to house.
(a) For crew manager, per year ..... $ 25.00
(b) For each crew member, per year 15.00

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property.
(a) Per year $100.00
(b) Per month 15.00

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed.
Per year ..... $ 25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph.
Per year $250.00

(18) To operate a hand organ in the city streets.
Per year ..... $ 15.00

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Section 51:31 to 51:41 of the Revised Statutes of Louisiana.
Per sale ..... $ 25.00

(20) Weighing devices, etc. on sidewalks or in public places.
Per nickel machine, per year ..... $ 25.00
Per penny machine, per year 15.00

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted.
Per month ..... $ 25.00

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(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis.
Per year in addition to license $100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.
Per year $100.00

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:
(a) Admission not more than 75¢ per event .. $ 15.00
(b) Admission more than 75¢ per event 25.00

(25) For amateur and professional prizefights or boxing and wrestling contests:
(a) Admission not more than 75¢ per event .. $ 15.00
(b) Admission more than 75¢ per event 25.00

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals, bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected.
(a) Admission not more than 75¢ or by invitation
Per event ..... $ 15.00
(b) Admission more than 75¢ per event 25.00

(27) For Carnival Balls ..... $ 25.00

(28) For philharmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner.
(a) Admission not more than 75¢ or by invitation
Per event ..... $ 15.00
(b) Admission more than 75¢ 25.00

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged.
Per year ..... $ 50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted.
Per year ..... $ 25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner.
Per year ..... $ 100.00

(32) For dancing when admission is charged:
(a) Admission not more than 75¢ per event ..... $ 15.00
(b) Admission not more than $1.99 per event ..... $ 25.00
(c) Admission $2.00 or more per event $ 50.00

(33) For a private dance in a public hall.
Per event ..... $ 15.00

(34) To give a rummage sale.
Per event ..... $ 15.00

(35) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof.
Per location, per year ..... $ 250.00

(36) To sell flowers on the city sidewalks or streets.
Per sales outlet, per year ..... $ 50.00

(37)—(40) Reserved.

(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or unnatural sex acts or otherwise appeal to sexually prurient interests and which establishments cater exclusively to adults $10,000.00

(C.C.S., Ord. No. 15,510, § 1; C.C.S., Ord. No. 17,633, § 1; C.C.S., Ord. No. 17,989, § 3; M.C.S., Ord. No. 3027, § 1, 3-4-65; M.C.S., Ord. No. 4346, § 1, 7-16-70; M.C.S., Ord. No. 4359, § 1, 8-6-70; M.C.S., Ord. No. 4360, § 1, 8-6-70; M.C.S., Ord. No. 4439, § 2, 12-18-70; M.C.S., Ord. No. 4555, §§ 1—3, 5-13-71; M.C.S., Ord. No. 4744, §§ 1, 2, 12-8-71; M.C.S., Ord. No. 5085, § 1, 2-15-73; M.C.S., Ord. No. 5086, § 1, 2-15-73.)

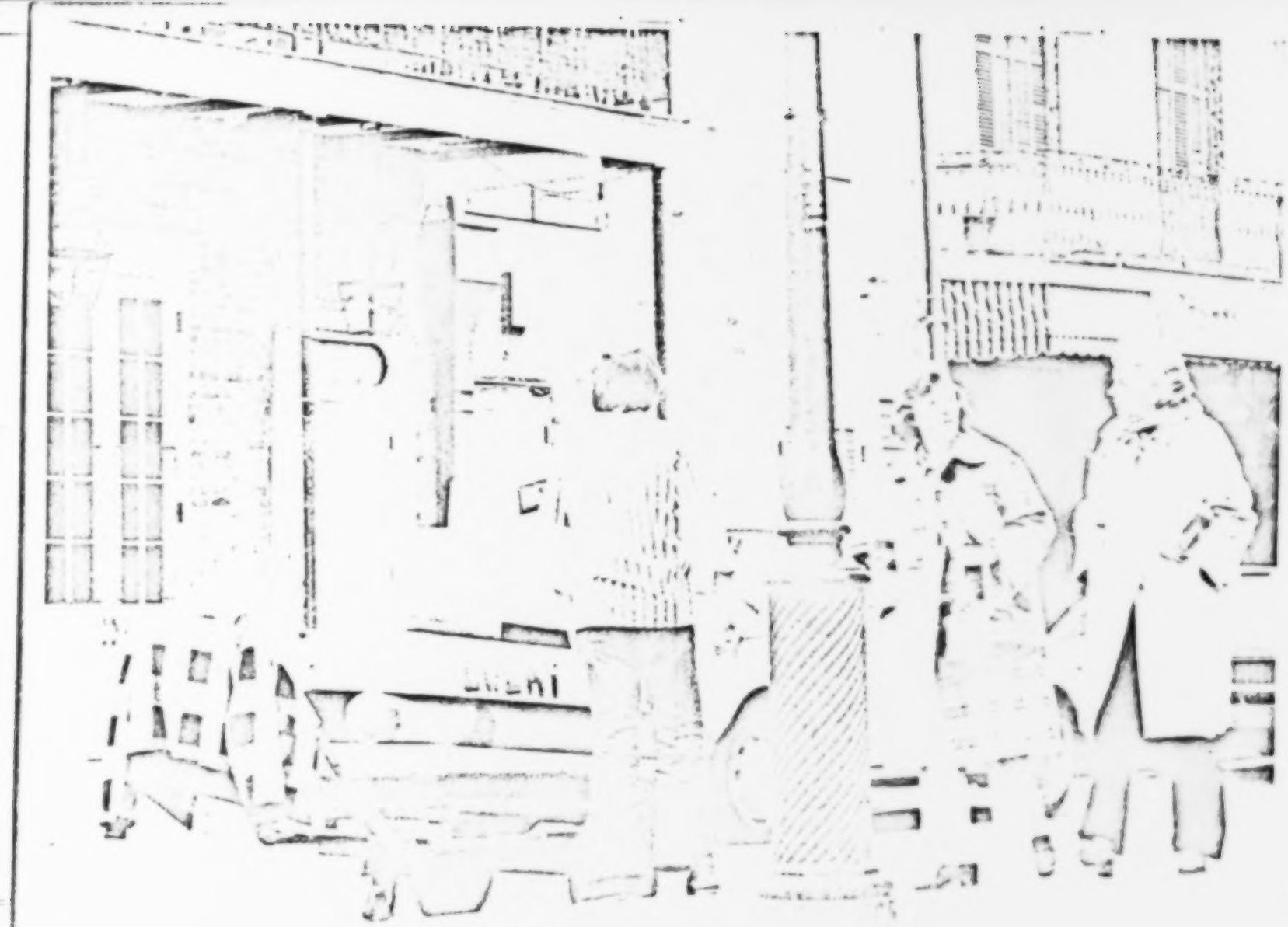
Section 46-1.1. Permits valid in the central business district.

Permits designated by the following subsection of Section 46-1: Subsections (1), (10), (12), (19), (21), (24), through and including (36), are valid within that area of the Central Business District bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South. Vendors who have continuously operated the same business within that area under the authority of this chapter for eight (8) or more years prior to January 1, 1972 may obtain a valid permit to operate such business within that area. (M.C.S., Ord. No. 4744, § 3, 12-8-71; M.C.S., Ord. No. 4822, § 1, 4-13-72; M.C.S., Ord. No. 4957, § 1, 9-21-72; M.C.S., Ord. No. 5087, § 1, 2-15-73.)

Section 46-2. Additional twenty-five cents charges for Police Pension Fund.

In addition to the charges shown in the schedule in Section 46-1, each applicant shall be required to pay the sum of twenty-five cents for the account of the Police Pension Fund, which additional sum shall be transmitted by the Collector of Revenue, day by day, as collected by him, to the Chief of Bureau of the Treasury. At the end of each month the Chief of Bureau of the Treasury shall remit all such sums so collected for account of the Police Pension Fund to the Board of Trustees, Police Pension Fund, City of New Orleans. (M.C.S., Ord. No. 217, § 1.)

APPENDIX "S"



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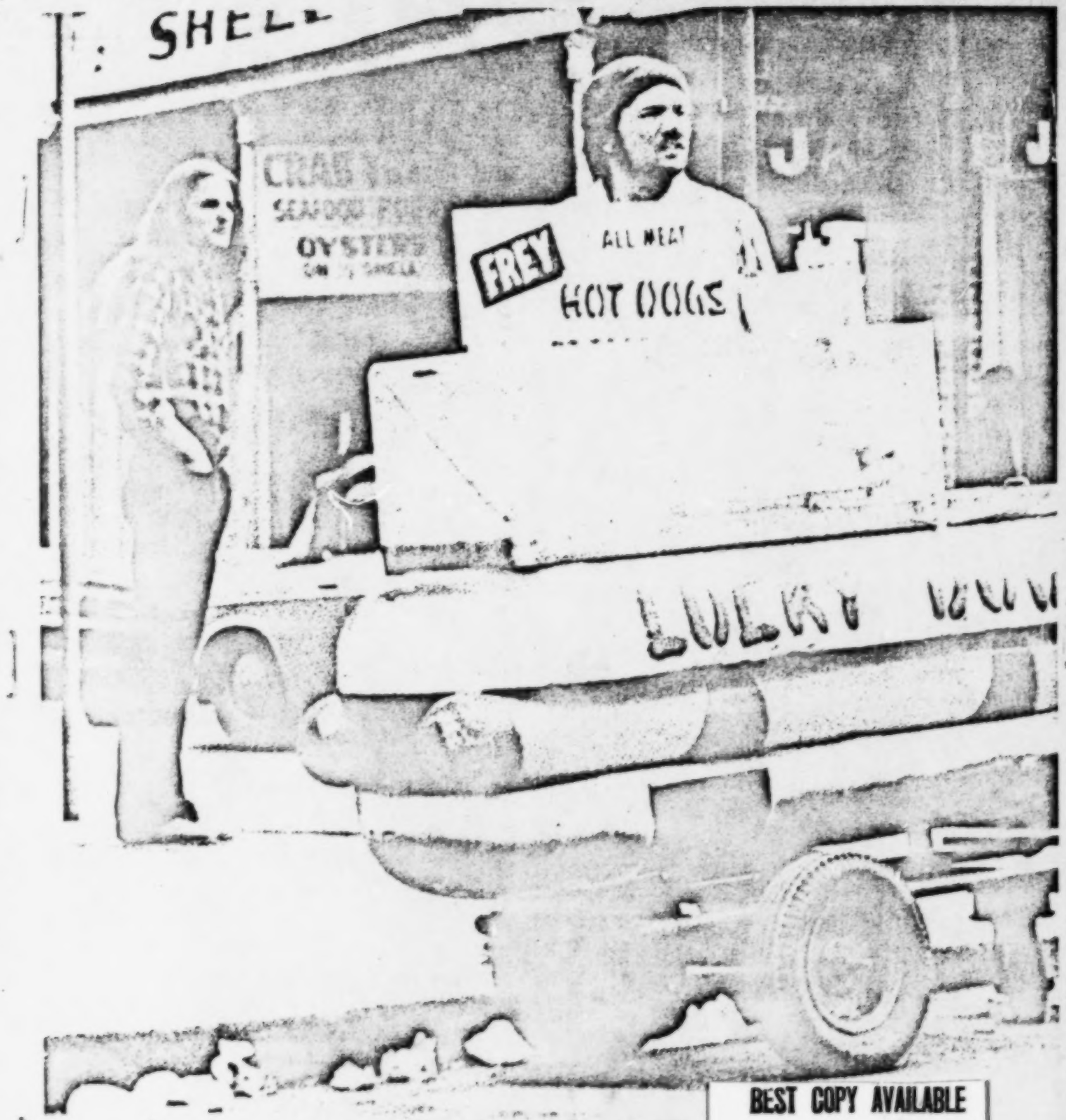

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-775

THE CITY OF NEW ORLEANS AND
HONORABLE MOON LANDRIEU,
Appellant,

versus

NANCY DUKES d/b/a LOUISIANA CONCESSIONS,
Appellee.

Appeal from the United States Court of Appeals
for the Fifth Circuit

BRIEF ON BEHALF OF APPELLANT

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IN THE
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THE CITY OF NEW ORLEANS
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Appeal from the United States Court of Appeals
for the Fifth Circuit

BRIEF ON BEHALF OF APPELLANT

OPINION BELOW

The opinion of the United States Court of Appeals, Fifth Circuit, may be found at 501 F.2d 706 (5th Cir. 1974).

JURISDICTION

This appeal is from a final judgment as to the constitutionality of a municipal ordinance of the City of

New Orleans handed down by the United States Court of Appeals for the Fifth Circuit on September 27, 1974 holding:

> "... appellant Dukes has overcome the presumption of constitutionality of the New Orleans ordinance's 'grandfather clause' by demonstrating the insubstantiality of the relation between the nature of the discrimination and the legitimate governmental interest in conserving the traditional aspects of the Vieux Carre . . . It is enough that the sum of the constitutional considerations examined outweighs the legislative presumption, so that we are not driven to balance each individual factor." 501 F.2d at 713.

The court further held the ordinance "unconstitutional as applied" and reversed a summary judgment which had been entered for appellant in the instant matter.

This Honorable Court has jurisdiction to review by direct appeal the Fifth Circuit's opinion by virtue of 28 U.S.C. §1254 (2).

ORDINANCE IN QUESTION

The municipal ordinance in question is 828 M.C.S. 46-1 and 46-1.1.

828 M.C.S. 46-1 is printed verbatim at page Vol. II, A. 1 of the appendix. 828 M.C.S. 46-1.1, reads as follows:

Section 46-1.1 Permits valid in the central business district.

Permits designated by the following subsection of Section 46-1: Subsections (1), (10), (12), (19), (21), (24), through and including (36), are valid within that area of the Central Business District bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South. Vendors who have continuously operated the same business within that area under the authority of this chapter for eight (8) or more years prior to January 1, 1972 may obtain a valid permit to operate such business within that area. (M.C.S., Ord. No. 4744, § 3, 12-8-71; M.C.S., Ord. No. 4822, § 1, 4-13-72; M.C.S., Ord. No. 4957, § 1, 9-21-72; M.C.S., Ord. No. 5087, § 1, 2-15-73.)

QUESTIONS PRESENTED

1. PURSUANT TO 28 U.S.C. 1254 (2) DOES THIS HONORABLE COURT HAVE JURISDICTION TO HEAR AND DETERMINE THE QUESTION OF THE CONSTITUTIONALITY OF A MUNICIPAL CITY ORDINANCE HAVING BEEN DECLARED UNCONSTITUTIONAL BY A FEDERAL COURT OF APPEALS?

2. THE COURT OF APPEALS FOR THE FIFTH CIRCUIT ERRED:

A.

IN FAILING TO RECOGNIZE THAT THE FRENCH QUARTER (VIEUX CARRE), THE HEART OF TOURISM IN THE CITY OF NEW ORLEANS, MUST, OF NECESSITY BE HIGHLY REGULATED IN ORDER TO MAINTAIN ITS DISTINCTIVE CHARM AND BEAUTY; AS ANY ADVERSE EFFECT ON ITS HISTORIC CHARACTER SEVERELY JEOPARDIZES THE ECONOMIC WELL-BEING OF THE ENTIRE CITY AND THEREFORE THE ORDINANCE IS DESERVING OF A MUCH MORE LIBERAL INTERPRETATION THAN THAT HANDED DOWN BY THE FIFTH CIRCUIT COURT OF APPEALS.

B.

IN HOLDING THAT THE PRESENT POSTURE OF THE MUNICIPAL ORDINANCES WAS VIOLATIVE OF EQUAL PROTECTION PRINCIPLES.

C.

IN HOLDING THAT THE RATIONALE OF THE NEW ORLEANS CITY COUNCIL IN ADOPTING THE QUESTIONED ORDINANCES WAS INSUFFICIENT TO SUPPORT THE DISCRIMINATION THEREBY IMPOSED.

D.

IN HOLDING THAT NANCY DUKES HAD OVERCOME THE PRESUMPTION OF CONSTITUTIONALITY OF THE NEW ORLEANS ORDINANCE'S "GRANDFATHER CLAUSE" BY DEMONSTRATING THE INSUBSTANTIALITY OF THE RELATION BETWEEN THE NATURE OF THE DISCRIMINATION AND THE LEGITIMATE GOVERNMENTAL INTEREST IN CONSERVING TRADITIONAL ASPECTS OF THE VIEUX CARRE.

E.

IN HOLDING THAT IN THEIR PRESENT POSTURE THE QUESTIONED ORDINANCES WERE UNCONSTITUTIONAL AS APPLIED.

STATEMENT OF THE CASE

Nancy Dukes brought this action against the City of New Orleans and the Honorable Mayor Moon Landrieu alleging a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

Before January 1, 1972, Dukes was in the business of selling food, drinks, confections, and novelties from push carts throughout the City of New Orleans. Subsequently the New Orleans City Council revised its ordinances, removing hot dog vendors from the list of specifically permitted pushcart enterprises in the Vieux Carre, but simultaneously allowing all licensed vendors who had continuously operated the same such licensed business in the Quarter for eight years prior to January 1, 1972, to continue selling, 828 M.C.S.

46-1. Since Dukes operation was only a year old, the effect of this revision was to eliminate her from the Vieux Carre market, but left the remainder of the city open to her. On January 17, 1972, one of Dukes' employees was arrested for violating New Orleans City Ordinance 828 M.C.S. 46-1.1 As a result of this arrest, Dukes initiated a Civil Suit in the United States District Court for the Eastern District of Louisiana, New Orleans Division on August 1, 1972 (Vol. I, A. 4), seeking declaratory and injunctive relief against defendants alleging that 46-1 and 46-1.1 were arbitrary, unreasonable and denied her due process and equal protection as guaranteed by the United States Constitution.

As there was no factual dispute to be resolved, cross motions for summary judgment were filed by both parties and after argument the Honorable Judge Jack Gordon granted defendant's motion, denied plaintiff's motion and dismissed the suit.

From that judgment plaintiff appealed to the United States Court of Appeals, Fifth Circuit which concluded that the ordinances in question as applied to Nancy Dukes deprived her of equal protection of the laws. The Court reversed and remanded the judgment appealed from, holding that the classificatory ordinances were not rationally guided and could not withstand constitutional attack.

ARGUMENT

I.

JURISDICTION

The Fifth Circuit Court of Appeals has held the questioned ordinance(s) "unconstitutional as applied" and therefore the judgment of the Court of Appeal is the proper subject of this appeal. Under 28 U.S.C. § 1254 (2) there is specific provision for appeals where an appellate court has held a state statute to be repugnant to the constitution, laws, or treaties of the United States:

> "Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:
>
> (2) By appeal by a party relying on a State Statute held by a court of appeals to be invalid as repugnant to the Constitution treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari in the instance of such appellant, and the review on appeal shall be restricted to the federal questions presented;"

For purposes of this provision, a "state statute" includes a municipal ordinance and city or borough charter.

In *Dusch* v. *Davis*, 387 U.S. 112 (1967), Justice Douglas pointed out most aptly that jurisdiction would be maintained under 28 U.S.C. § 1254 (2) and re-

versed the Fourth Circuit Court of Appeals' holding as to the constitutionality of certain borough charter provisions in Virginia. Again, in *City of Detroit* v. *Murray Corp. of America*, 355 U.S. 489 (1958), this Court assumed jurisdiction and passed on the constitutionality of city charter provisions of the City of Detroit.

More directly on point with the instant matter, this Court, in *City of Chicago* v. *Atchison, Topeka and Santa Fe Railway Company*, 357 U.S. 77 (1958), maintained jurisdiction under 28 U.S.C. § 1254 (2), and passed on the constitutionality of a municipal ordinance of the city of Chicago. *SEE ALSO: United Gas Pipeline Co.* v. *Ideal Cement Co.*, 369 U.S. 134 (1961) and *Watson* v. *Employers Liability Assurance Corp.*, 348 U.S. 66 (1954), rehearing denied, 348 U.S. 921 (1954).

In perhaps one of the most authoritative decisions in this area, this court, in *John P. King Mfg. Co.* v. *City Council of Augusta*, 277 U.S. 100 (1928) held, in expounding upon the predecessor of 28 U.S.C. § 1254 (2):

> "It of course rests with each state to determine in what form and by what agencies its legislative power may be exerted. It may legislate little or much in its Constitution, may permit the electorate to make laws by direct vote, may intrust its Legislature with wide lawmaking functions, and may delegate legislative authority to subordinate agencies, such as Municipal Councils and State Commissions. But whether this power be exerted in one form or another, or by one agency

> or another, the enactments put forth, whether called Constitutional provisions, laws, ordinances, or orders are in essence legislative acts of the State; they express its will, and have no force otherwise. As respects their validity under the Constitution of the United States, all are on the same plane." 277 U.S. at 103.

Accord: Lathrop v. *Donohue*, 367 U.S. 820 (1961), concerning a similar jurisdictional question wherein it was held:

> "Any enactment, from whatever source originating, to which a state gives the force of law is a statute, within the meaning of the clause cited relating to the jurisdiction of this court."

Certain requirements have evolved jurisprudentially over the years which must be met in order for a matter such as the one at bar to come within the ambit of the direct appeal provision of 28 U.S.C. § 1254 (2).

In *Slaker* v. *O'Connor*, 278 U.S. 188 (1929), this court construed the substantially identical predecessor of § 1254 (2) as requiring a "final" judgment in a case before an appeal could be taken. The *Slaker* case was followed without comment, as to § 1254 (2), by the per curiam opinion in *South Carolina Electric and Gas Company* v. *Fleming*, 351 U.S. 901 (1956).

In the present matter this requirement of finality has been met by the judgment of the Fifth Circuit that

the ordinance under consideration, 828 M.C.S. 46-1, 46-1.1, is unconstitutional. This holding was final and determinative on this point and as such must be followed, as to the federal constitutional question, on remand. The District Court can not now hold that the ordinance in question is constitutional, it only has to determine whether the questioned grandfather clause "was severable from the ordinance's simultaneous general preclusion of pushcart hot dog vendors from the Quarter, that is, whether the ordinance should be read as a total nullity, or whether it should be read to preclude the operation of all pushcart hot dog dealers in the Vieux Carre." In either case the Court of Appeals did finally determine that the grandfather clause was unconstitutional.

Mr. Justice White, in the recent case of *Cox Broadcasting Corporation* v. *Cohn*, ___ U.S. ___, 95 S.Ct. 1029 (1975), noted that the Court has recurringly encountered situations where a federal issue present in a particular case has been decided by an appellate court but in which there are further proceedings in the lower courts to come.

In a footnote to this decision Justice White again affirmed this court's approach to finality requirements citing the landmark decision, and the cases cited therein, of *Gillespie* v. *U.S. Steel*, 379 U.S. 148 (1964):

> "And our cases long have recognized that whether a ruling is 'final' . . . is frequently so close a question that decision of that issue either way can be supported with equally forceful arguments, and that it is impossible to devise a formula to resolve all marginal cases coming within what might well be called the 'twilight zone' of finality. Because of this difficulty this Court has held that the requirement of finality is to be given a 'practical rather than a technical construction.' *Cohen v. Beneficial Industrial Loan Corp., supra*, 337 U.S. 541, at 546, 69 S.Ct. 1221, 93 L.Ed. 1528. See also *Brown Shoe Co. v. United States*, 370 U.S. 294, 306, 82 S.Ct. 1502, 1503, 8 L.Ed.2d 510; *Bronson v. Railroad Co.*, 2 Black 524, 531, 17 L.Ed. 347, 359; *Forgay v. Conrad*, 6 How. 201, 203, 12 L.Ed. 404. *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511, 70 S.Ct. 322, 324, 94 L.Ed. 299, pointed out that in deciding the question of finality the most important competing considerations are 'the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other.' " *Id.*, at 152-153, 85 S.Ct., at 311.

See also: MTM, Inc. v. Baxley, ___ *U.S.* ___, 95 S.Ct. 1278 (1975); *Organization for a Better Austin* v. *Keefe*, 402 U.S. 415 (1971); *Local #438* v. *Curry*, 371 U.S. 542 (1963); *Pope* v. *Atlantic C.L.R. Co.*, 345 U.S. 379 (1953); *Hudson Distributors Inc.* v. *Eli Lilly Co.*, 377 U.S. 386 (1964); *Radio Station WOW* v. *Johnson*, 326 U.S. 120 (1945).

When subjected to a reasonable interpretation, the judgment of the Fifth Circuit herein is final in all respects as to the federal constitutional questions, supra, particularly when viewed in light of the above jurisprudence.

Another recent decision in the area of finality is *North Dakota State Board of Pharmacy* v. *Snyder's Drug Stores*, 414 U.S. 156 (1973), in which a state supreme court held a statute to be unconstitutional

and remanded the matter for further consideration. This Court, after considering various circumstances under which the requirement of finality has been satisfied despite the fact that litigation had not terminated, entertained the case over claims that it had no jurisdiction. The federal issue had been finally determined and would not have survived the remand. *See also: Miami Herald Publishing Company* v. *Tornillo*, 418 U.S. 241 (1974), wherein jurisdiction was sustained based on the principles enunciated in the *North Dakota* case. In these two cases, as in the instant matter, the fact that the case was remanded had no material effect on the determination of the federal question which had become finalized in the lower court.

In a case similar to the one at bar a direct appeal to this court was upheld under 28 U.S.C. § 1254 (2) based upon a lower court's finding that a state statute was unconstitutional "as applied", which is much the same as the instant matter in that the Fifth Circuit held the same way on this point. *Dutton* v. *Evans*, 400 U.S. 74 (1970).

In view of the above cited and quoted jurisprudence it is respectfully submitted that a direct appeal to this Honorable Court does in fact lie from the decision of the Fifth Circuit Court of Appeals under 28 U.S.C. § 1254 (2) and this court has jurisdiction to hear and determine the constitutionality of 828 M.C.S. 46-1, 46-1.1 and the provisions therein; and, therefore, this case presents an excellent opportunity to put to rest the previously undecided "finality" question once and for all. *City of Chicago* v. *Atchison T. & S. F. Ry. Co.*, supra, and *City of El Paso* v. *Simmons*, 379 U.S. 497 (1965); in which the "finality" question was left open.

II.

ARE 828 MCS 46-1 AND 46-1.1 UNCONSTITUTIONAL?

Article XIV Section 22 of the Constitution of the State of Louisiana provides, in pertinent part:

> "§22. New Orleans; election of officers; form of government; powers; *home rule charters*
>
> Section 22. The electors of the City of New Orleans and of any political corporation which may be established within the territory now, or which may hereafter be embraced within the corporate limits of said city, shall have the right to choose their public officers, and the form of government of said city.
>
> Subject to the limitations elsewhere contained in this Constitution, *the City of New Orleans is hereby declared to have a home rule charter.*
>
> The City of New Orleans, in addition to the powers expressly conferred upon it by Act 159 of 1912, as amended through the Regular Legislative Session of 1950, shall have the right and authority to adopt and enforce local police, sanitary and similar *regulations* and *to do and perform all of the acts pertaining to its local affairs, property* and government, which are necessary or proper in the legitimate exercise of its corporate powers and municipal functions."

Chapter 8 of Article V of the Home Rule Charter, entitled "The Vieux Carre Commission" states the powers of the City Council in maintaining the charm, character and economic viability of the Vieux Carre as follows:

> "Section 5-803 Enforcement. The Council shall by ordinance or otherwise carry into effect provisions of the Constitution relative to the Vieux Carre Section and shall provide for the enforcement of such provisions by appropriate legal proceedings including resort to injunctive process."

The question now becomes whether or not 828 MCS 46-1 and 46-1.1 are able to withstand plaintiff's attack on their constitutionality as a violation of the "Due Process" and "Equal Protection" clauses of the Fourteenth Amendment to the United States Constitution.

A. Are All Types Of Discrimination Prevented By The Due Process And Equal Protection Clauses?

In the well known case of *Oregon v. Mitchell*, 400 U.S. 112, 125, 91 S.Ct. 260, 265 (1970) the United States Supreme Court said of discriminatory laws:

> "It cannot be successfully argued that the Fourteenth Amendment was intended to strip the States of their power, carefully preserved in the original Constitution, to govern themselves. The Fourteenth Amendment was surely not intended to make every discrimination

> between groups of people a constitutional denial of equal protection."

This is an indication that the Fourteenth Amendment is not to be interpreted as an overall prohibition against any and all types of discriminatory classification or treatment under state law. In *Lehnhouser v. Lake Shore Auto Parts Co.*, 93 S.Ct. 1001 (1973) the Court stated that the:

> "Equal protection clause does not mean that a state may not draw lines that treat one class of individuals or entities different from the others, and the test is whether the difference in treatment is an invidious discrimination."

Accord: *League of Academic Women v. Regents of University of California*, 343 F.Supp. 636 (N.D. Cal. 1973) where it was held that:

> "It is a far different thing to say that a statute extends a right to one group while denying it to another, than it is to say that a statute provides the same rights to everyone, but does not extend an additional right to any of them . . . The Fourteenth Amendment is not a mandate that every statute must be read to outlaw all forms of discrimination."

These cases represent only a small sample of a long line of jurisprudence upholding differences in statutory classification. They exemplify the fact that society today still provides for and maintains certain forms of necessary discrimination. By these statutory classifications the state is attempting to achieve

and maintain the general welfare of its citizens. Society's interests are weighed against the rights of particular individuals. There exists a compelling societal interest in these types of cases that predominates over individual rights and privileges.

This is precisely the issue involved in the case at bar. The interests of the City of New Orleans and the State of Louisiana are vitally affected by that section of the City known as the Vieux Carre. The economic welfare of the City of New Orleans rests on this specially designated area. It is the heart of the City's tourist industry. The incalculable value of this tourist trade prompted the City Council to adopt ordinances to preserve the integrity and to insure the economic viability of the area in a way most conducive to both tourist and citizen alike. This then is the compelling interest of the city which necessitated the enactment of the ordinance in question. No tourist or citizen appreciates peddlers or hawkers interfering with their rights to observe and enjoy the charm and beauty of the New Orleans Vieux Carre. Equal protection does not require that statutes never distinguish between citizens but only that distinctions that are made not be arbitrary or invidious.

In perhaps the landmark case in this area this Court held:

> "The Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly ir-

> relevant to the State's objective . . . *A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.*" *McGowan v. Maryland*, 366 U.S. 420, 81 S.Ct. 1101 (1961).

We reiterate the fact that the City of New Orleans has a valid compelling interest in protecting and preserving the Vieux Carre both as a valuable and productive tourist attraction as well as a beautiful and natural respite for its citizens to enjoy. This protection and preservation is impeded by the indiscriminate allowance of peddlers and hawkers to confront tourists and citizens. The fact that some peddlers are allowed to peddle and not the plaintiff in this action only tends to demonstrate the City Council's interest in keeping the Vieux Carre the tourist attraction it has always been. The Council sought to allow only those peddlers to remain who have over a long period of time become a part of the unique charm and beauty that is characteristic of the Vieux Carre while at the same time maintaining the vitally important economic viability of the area itself.

As the Comprehensive Study Plan and Program for the Vieux Carre, a study done under a grant from the Department of Housing and Urban Development, Vol. II, A. 31, demonstrates, the Vieux Carre plays a special and vital role in the economy of the City of New Orleans. Its unique economic character is shaped by the diverse elements constituting its market, such elements remaining from prior economic eras. This historic marketplace forms an integral part of the economic setting of the City of New Orleans, a major commercial center of both the south and the entire country:

> "Metropolitan New Orleans, with a population of over one million persons, is one of the major commercial centers in the South. It is a regional center of trade, services, and finance, and a major seaport ranking second to New York in dollar volume of goods exported." (Vol. II, A. 33-34.)

Therefore, anything having an adverse effect on the focal point of such an economic system has deleterious repercussions not only on the city but also on the state and even national economies.

There are several reasons for the economic importance of the Vieux Carre to the City of New Orleans, but this historic district makes its greatest contribution to the economy of the metropolitan area by serving as a principal attraction for tourists and citizens. As the study indicates "the Vieux Carre offers an authentic historic environment with specialty shops, restaurants, and lively night-time entertainment." The nationally publicized attractions of the French Quarter make it the most logical and lucrative location for the majority of the city's visitor services. Vieux Carre hotels and motels realize a major portion of the total monies gained by New Orleans from city-wide sales in transient accommodations. The impact of these hotels and motels goes far beyond simply sales information. Again, as the study indicates, "their most important contribution to the City's economy is the large numbers of potential customers housed in close proximity with the French Quarter's retail establishments." (Vol. II, A. 35). Also, new hotel and motel construction in the Vieux Carre, with its attendant buying and selling of real estate, has increased the value of real property in the area which is a good indicator of economic conditions and importance. High rents and increased property values are good indications of a healthy and viable business environment as well. These rising real estate values have fostered the rehabilitation and commercial or tourist use of many old and deteriorated properties in the Vieux Carre. Retail real estate needs in this area in coming years are expected to increase at a very high rate. (Vol. II, A. 31). This diverse pattern of land use in the Vieux Carre has not altered the area's status as a highly attractive place for in-town living as well. The area is close to the city's employment and entertainment centers and many small business establishments exist to cater to the needs of local residents, thus creating a mix of business and residential which is fairly unique in this country and adds immeasurably to the charm, beauty and economic viability of the entire city, much the same as Georgetown does for Washington D.C. (Vol. II, A. 31).

The single most important sector of the Vieux Carre's economy is retailing. Retail establishments employ thousands of citizens and account for hundreds of thousands of feet of floor space in the area. Thus the French Quarter plays a major role in several categories of metropolitan retail trade activity. (Vol. II, A. 31). A large number of the City's many antique shops, gift stores, art galleries, and other specialty shops are concentrated in this historic area. (Vol. II, A. 31). Nationally acclaimed "restaurants, bars, and nightclubs have made the French Quarter the entertainment center of the South and one of the most famous in the country." (Vol. II, A. 40). Support for these establishments comes mainly from tourists who

are charmed by the quaint and historic atmosphere of this monument to historic preservation.

Consequently it is of paramount importance that the City of New Orleans protect and preserve the Vieux Carre as an historic area of national significance. The City has a valid compelling interest in maintaining the French Quarter's "physical, social, and economic potential as an important tourist center, a resource for the citizens of metropolitan New Orleans, a desirable in-town residential district, a focal area for the arts and crafts, a major shopping and entertainment complex, and a vital part of the city's economic and tax base." (Vol. II, A. 50-51). Preservation and protection to be of any significance must encompass "both the physical and functional elements of the French Quarter that contribute to its identity and environmental unity." (Vol. II, A. 51). Efforts are being directed at the sum total effect, buildings plus environment. In the Vieux Carre the past has created the present which, in turn, is shaping the future economic viability of an entire city. Integral elements of the past and present charm and historic beauty which characterize this center of southern and national tourism will be destroyed by the indiscriminate allowance of hawkers and peddlers to fill its streets. The contemporary identity and economic utility of the Vieux Carre can best be understood as the product of historical continuity, so the City of New Orleans has a vested interest in preservation planning to assure the extension of a past continuity into the future. (Vol. II, A. 31).

Lucky Dogs, Inc., in whose favor the questioned ordinances allegedly produced a monopoly has been operating its same business in the Vieux Carre for

over twenty years. It has been and still is selling hot dogs from distinctive little carts, which are actually enlarged model versions of the product itself. Tourists, and citizens alike, for years have seen these carts spotted throughout the French Quarter, as a pleasant nostalgic reminder of their visit to the French Quarter, and often seek them out to photograph. The Fifth Circuit itself noted that the City might regulate the appearance of the pushcarts to satisfy the same concerns that prompted the ordinance. These quaint little carts, over the years have become as common a sight in the Vieux Carre as horse drawn carriages.

Traditionally Lucky Dogs has added to and become part and parcel of the charm and beauty that is characteristic of the New Orleans Vieux Carre much the same as Bourbon Street, St. Louis Cathedral, Jackson Square and the Cabildo have in their own way also become part and parcel of the Vieux Carre's unique charm and beauty thus achieving the unique mix of business and residential mentioned supra. Again they have been in the Vieux Carre for almost 20 years, and have become a most sought after element for use in both private and commercial photographs of French Quarter street scenes. Post cards showing sights in the Vieux Carre invariably will contain the carts and their costumed attendants. (Vol. II, A. 64-65). Newspaper photographs of world renowned Bourbon Street most often contain some portion of a Lucky Dog cart. (Vol. II, A. 66).

Magazine Guides to the City's annual Mardi Gras festivities often contain kind words about the inexpensive and forever present Lucky Dogs. (Vol. II, A. 67).

Lucky Dogs have gained for themselves through the years a place among the sights and sounds which are characteristic of New Orleans' number one tourist attraction. So much a part of the atmosphere of the French Quarter are the quaint carts and their costumed attendants that *New Orleans Magazine* featured one on its July, 1974 cover (Vol. II, A. 73). while stating about Lucky Dogs:

> "ON THE COVER: Hot Dog! Summer in the City! Kael Hanks is about to take a bite out of a Lucky Dog, one of the small delights offered to vacationers spending July at home." (Vol. II, A. 73).

Eastern Airlines' travel magazine, "*Pastimes*", even mentions Lucky Dogs among famous "Epicurean Specialties of the Vieux Carre". (Vol. II, A. 75). This is only a small sample of the local and national recognition received by this traditional and integral element in the charm and beauty of New Orleans' French Quarter which makes it the attraction it is.

It was for these reasons, not because of special or favored treatment of Lucky Dogs, that the questioned grandfather clause was enacted to prevent the indiscriminate allowance of peddlers and hawkers to ruin the economic viability of the Vieux Carre, which had become a major problem at the time of enactment, while maintaining those who had become a part of the Vieux Carre and in fact added to rather than detracted from its economic viability.

Appellants respectfully reiterate the fact that the City most definitely has a compelling interest in

maintaining the economic viability of this area, and in protecting it from the eroding effects which indiscriminate allowance of peddlers and hawkers would involve.

What the Fifth Circuit has done is to substitute its judgment for that of the City Council of the City of New Orleans, an action that has never been condoned by this court for it has never been the intention of this court to allow the judicial abrogation of the powers of duly elected public officials, a fact which is the main reason for the long line of cases favoring liberal interpretation of the constitutionality of municipal ordinances and statutes, particularly if their design and impact effects the economic well being of the city itself.

Simply stated, when a weighing process is involved effecting the long range economic welfare of an entire city as opposed to the short range desires of one individual, the judgment of the City Council, the representative of the people of the entire city *must* be given wide latitude and liberal construction unless patently offensive to the notions of equal protection and fair play.

In the recent case of *Frontiers* v. *Richardson*, 411 U.S. 677, 93 S.Ct. 1764 (1973) the Court flatly stated:

> "Under 'traditional' equal protection analysis, a legislative classification must be sustained unless it is 'patently arbitrary' and bears no rational relationship to a legitimate governmental interest."

Accord: *Jefferson* v. *Hackney*, 406 U.S. 535, 546, 92 S.Ct. 1724, 1731 (1972); *Richardson* v. *Belcher*, 404 U.S. 78, 81, 92 S.Ct. 254, 257 (1971); *Fleming* v. *Nestor*, 363 U.S. 603, 611, 80 S.Ct. 1367, 1372 (1960); *McGowan* v. *Maryland*, supra; *Dandridge* v. *Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161 (1970); *McDonald* v. *Board of Election Com'rs of Chicago*, 394 U.S. 802, 89 S.Ct. 1404 (1969); *U.S. Department of Agriculture* v. *Moreno*, 93 S.Ct. 2821 (1973).

In the *McDonald* case cited supra and also in the case of *Reed* v. *Reed*, 404 U.S. 71, 92 S.Ct. 251 (1971) the Supreme Court again emphasized the fact that it did allow certain discriminatory statutory law:

> "The Equal protection clause of the Fourteenth Amendment does not deny to states the power to treat different classes of persons in different ways; the clause does, however, deny the states the power to legislate that different treatment be accorded to persons or places by statute into different classes on basis of criteria wholly unrelated to the objective of that statute."

See also: *Eisenstadt* v. *Baird*, 405 U.S. 438, 92 S.Ct. 1029 (1972).

The court went on in *Reed* to say that:

> "In order not to violate the equal protection clause a statutory classification must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

Applying these standards to the issue at bar defendants show that the ordinance in question is not violative of constitutional mandates in that it is patently reasonable and not arbitrary since its exclusion of certain peddlers is based on fair criteria that attempts to maintain the traditional atmosphere of the Vieux Carre which is so vitally necessary for its economic viability and the benefits derived by all citizens of New Orleans therefrom. This clearly is a compelling and valid objective.

See: *Turner* v. *Fouche*, 396 U.S. 346, 90 S.Ct. 532 (1970) where it was held that:

> "The traditional test for denial of equal protection is whether the challenged classification rests on grounds wholly irrelevant to the achievement of valid state objectives."

and: *Police Department of City of Chicago* v. *Mosley*, 408 U.S. 92, 92 S.Ct. 2286 (1972) in which the court succinctly stated:

> "Crucial in equal protection cases is whether there is an appropriate governmental interest suitably furthered by the differential treatment."

It is patently obvious that the economic viability of an area of a city is a valid and compelling purpose that should merit the government's protection through legislation; and, if this area of the city also is vitally

important in maintaining the overall economic well-being of the entire city, as is the Vieux Carre, then the interest in closely legislating and protecting the viability of the area is even more compelling. It is only invidious, unnecessary, and totally arbitrary classifications and treatment that the spirit and the letter of the Fourteenth Amendment prohibit. A classification or a statute having some reasonable basis does not offend the Constitution merely because it is not made with mathematical nicety, or the practice results in some inequality. The city should not be caused to lose its entire remedial scheme merely because it failed to cover every peddler at one time. It has been held that:

> "If the classification . . . is shown to have a substantial relationship to a lawful objective and is not void for other reasons, such as overbreadth, it will be upheld . . ." *Boroas v. Village of Belle Terre*, 476 F.2d 806 (2nd Cir. 1973)

Accord: *Godwin* v. *Patterson*, 363 F.Supp. 238 (M.D. Ala. N.D., 1973).

As this Court stated in *Norvell* v. *State of Illinois*, 373 U.S. 420, 83 S.Ct. 1366 (1963):

> "Exact equality is no prerequisite of equal protection of the laws within the meaning of the Fourteenth Amendment . . . *The rough accommodations made by government do not violate the equal protection clause unless the lines drawn are hostile and invidious.*"

and in *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District*, 93 S.Ct. 1224 (1973):

> "The equal protection clause does not make every minor difference in the application of laws to different groups a violation of our Constitution."

B. Does The Fourteenth Amendment Protect Plaintiff's Economic Interests?

This Court in the case of *Weber* v. *Aetna Casualty and Sur. Co.*, 406 U.S. 164, 92 S.Ct. 1400 (1972) stated that:

> "The essential inquiry . . . [in determining the validity of a state statute under the equal protection clause] . . . is a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?"

Also in the case of *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621, 89 S.Ct. 1886 (1969), this Court held:

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification."

Accord: *Williams* v. *Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 10 (1968).

The case at bar necessarily involves a weighing process concerning the interests of the City of New Orleans and those of the plaintiff, Nancy Dukes. As we have previously shown, the ordinance in question is attempting to protect the charm, beauty and tradition that are so vitally necessary for the economic productivity of an entire area of the City as well as that of the City itself. To this end the City has a valid and compelling interest in preventing the enjoyment of this area by tourists and citizens alike from being hindered and lessened by the intervention of innumerable peddlers and hawkers physically soliciting and bothering them so as to lessen their enjoyment of the Vieux Carre. Plaintiff is attempting to protect an alleged right to sell her goods in the Vieux Carre from interference by the City. It is most vehemently argued that while plaintiff is free to sell her wares anywhere else in the entire City, the prevention of their sales in the Vieux Carre does not endanger or invade any fundamental personal right possessed by the Plaintiff. Rather, her right to sell food, soft drinks and confections in the Vieux Carre must be balanced against the City's compelling interest in preserving this area for its very economic well-being; for if both citizens and tourists alike are bothered to the extent that they cease to frequent the Vieux Carre then the economic stability of the entire city will be in severe jeopardy.

In the case of *Levy* v. *Louisiana*, 391 U.S. 68, 88 S.Ct. 1509 (1968), this Court held that:

> "In applying the equal protection clause to social and *economic* legislation, we give great latitude to the legislature in making classifications."

And even more succinctly in *Palmer* v. *Thompson*, 403 U.S. 217, 91 S.Ct. 1940 (1969) the Court held:

> "The right to equal protection does not promise or guarantee economic or financial equality."

Likewise in the case of *San Antonio Independent School District* v. *Rodriquez*, 411 U.S. 1, 93 S.Ct. 1278 (1973) the Court said:

> ". . . at least where wealth is involved the Equal Protection Clause does not require absolute equality or precisely equal advantages."

In the case of *In Re Hoover*, 447 F.2d 195 (5th Cir. 1971) a Louisiana statute affording preferential treatment of sellers of goods sold in the state over sellers of goods sold outside the state was held not so unreasonable and arbitrary as to be invidiously discriminating and violative of the equal protection clause.

These cases lend credence to the assertion that the spirit of the Fourteenth Amendment is designed to protect the more fundamental and personal rights from invidious discrimination or interference by state or municipal statutory law.

It is patently obvious that merely because an individual may be at some economic disadvantage this does not automatically make him the victim of an arbitrary, unreasonable and invidious discrimination which is violative of the equal protection clause, par-

ticularly where the state demonstrates a necessary and compelling interest necessitating the legislation.

One final point mentioned in *McGowan*, supra, is that the equal protection clause relates to equality between *persons* as such, rather than between areas and therefore territorial uniformity is not a constitutional prerequisite within the ambit of the equal protection clause of the Fourteenth Amendment.

It is respectfully submitted that this is precisely the point in the instant matter for all Dukes is asserting is that she cannot go into the Vieux Carre and sell her food, soft-drinks and confections from pushcarts while she *can* ply her trade in the rest of the city. This is no equal protection argument at all particularly in view of *McGowan* and the fact that she is advancing a territorial argument and *not* a personal argument and particularly in view of the fact that in her brief to the 5th Cir. Court of Appeals, she is apparently now seeking only to sell hot dogs and therefore has abandoned her previous argument that there is an inequality between her and the *persons* who validly come under 828 M.C.S. 46-1 and 46-1.1.

C. Are All Legislative Monopolies Unlawful?

The Court of Appeals in its decision states that:

> "Of course it is true that not every statute treating uniquely some individual enterprise or some closed class of enterprises is constitutionally objected. Nevertheless, the creation of a protected monopoly for the favored

> class member is a significant factor to be considered in assessing the nature of the discrimination here."

Such a concept is precisely the point. The fact that only Lucky Dogs, Inc. qualified under the ordinance is expressive of the intent of the New Orleans City Council in enacting such ordinances dealing exclusively with the French Quarter. This section of the City is afforded special treatment in the City's Municipal Code. The alleged monopoly in the case at bar was incidentally created by the city in its effort to maintain, as is, its main tourist attraction. The questioned grandfather clause is illustrative of the desire, not to favor particular businesses, but to maintain only those features which over the years, over a score of years in this case, have become landmarks in this area of the City of New Orleans. It is an entire area of the City which is intentionally preserved, and not individual establishments. Such intent should be viewed in its entirety, and not dissected into each of its incidental side efforts. We urge this Honorable Court, therefore, to consider that such action on the part of the City of New Orleans represents a legitimate and compelling governmental interest in that the economic well-being of an entire city largely hinges on revenues derived from tourism generated in this distinctive area.

Consequently, based on appellants' assertion that the ordinances questioned in the case at hand represent legitimate governmental and legislative activity, any incidental adverse effects created thereby are outweighed by compelling state interests and therefore not objectionable. More specifically, the alleged monopoly found by the Court of Appeals to have been

created by the ordinances, was the result of valid and compelling legislative activity, and therefore not prohibited.

Similar monopolies legislatively created because of valid governmental interests have been upheld. In the case of *Ladue Local Lines, Inc.* v. *Bi-State Development Agency of The Missouri-Illinois Metropolitan District*, 433 F.2d 131 (1970) it was stated:

> "We deem it well settled that when a state announces a public policy against free competition in an industry essential to it, state control and regulation of that industry, even to the extent of eliminating competition, is permissible."

Also in the case of *Nebbia* v. *New York*, 291 U.S. 502, 529-530, 538, 54 S.Ct. 505, 512-513, 516, 78 L.Ed. 940 (1934) it was held:

> "The public policy with respect to free competition has engendered state and federal statutes prohibiting monopolies, which have been upheld. On the other hand, where the policy of the state dictated that a monopoly should be granted, statutes having that effect have been held inoffensive to the constitutional guarantees. Moreover, the state or a municipality may itself enter into business in competition with private proprietors, and thus effectively although indirectly control the prices charged by them.

> "If the lawmaking body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition an inadequate safeguard of the consumer's interests, produce waste harmful to the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the Legislature to be fair to those engaged in the industry and to the consuming public."

Accord: *Heath* v. *Aspen Skiing Corporation*, 325 F.Supp. 223 (1971); *Sun Valley Disposal Co.* v. *Silver State Taxicab Operators' Ass'n.* v. *Yellow Cab Co.*, 278 F.Supp. 979 (1968).

CONCLUSION

It is respectfully submitted, that the decision of the Fifth Circuit, in holding that the rationale behind the questioned ordinances was insufficient to withstand attack, was erroneous in that said rationale represented a compelling governmental interest on the part of the city of New Orleans. This decision has wide ramifications, in that it could affect all alleged monopolies legislatively created in the public interest. Any governmental activity which resulted in such territorial discrimination could be challenged under this decision. We believe that the questions submitted are truly substantial and represent to this Court far reaching issues of the most vital public importance that must be answered.

Respectfully submitted,

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CERTIFICATE

The undersigned hereby certifies that a true and correct copy of the above and foregoing has been served on counsel of record by depositing same in the United States mail, postage prepaid, properly addressed this ____ day of June, 1975.

Supreme Court, U. S.
FILED
AUG 14 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-775

THE CITY OF NEW ORLEANS AND
HONORABLE MOON LANDRIEU,

Appellant,

v.

NANCY DUKES d/b/a LOUISIANA CONCESSIONS,

Appellee.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF APPELLEE

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IN THE

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OCTOBER TERM, 1975

No. 74-775

THE CITY OF NEW ORLEANS AND
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v.

NANCY DUKES d/b/a LOUISIANA CONCESSIONS,

Appellee.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF APPELLEE

STATEMENT OF THE CASE

The Appellee, Nancy Dukes, d/b/a Louisiana Concessions, filed a Civil Rights Action pursuant to 42 USC § 1983 & 1985 which was allotted to Honorable Jack M. Gordon, Presiding, United States District Court for the Eastern District of Louisiana. Relief was also sought under 28 USC § 2201 & 2202, whereby a declaratory

judgment was sought declaring Chapter 46, § 1[1] of the Code of the City of New Orleans, as amended, unconstitutional as applied to the Appellee. Appellee further alleged that this City Ordinance was "facially unconstitutional" because it "invidiously discriminated" against Appellee in favor of other individuals engaged in similar, if not the same activities. The original Complaint alleged that the City did not have any "compelling state interest" in the enforcement of such a law. Violations of the "due process" and "equal protection" clauses of the Fourteenth Amendment of the United States Constitution were alleged.

[1] Appellee has presented Chapter 46, § 1 in its present form in Appendix "R". Appellee's treatment of the Legislative history of this Ordinance spans a period from 1942 up to and through 1973. This so-called "Permit Law" has its roots in the Commission Council Series of Ordinances prior to 1954 which are cited herein at CCS # ____. In 1954, the City of New Orleans adopted a new form of government and began to pass Ordinances under the Mayor Council Series, referred to herein as MCS # ____. With the adoption of the MCS Ordinances, the City adopted the Code of the City of New Orleans whereby it designated that the "Permit Law" appear in certain Chapters of the City Code. At first under the MCS Ordinances, the "Permit Law" appeared in Chapter 14 of the City Code, and subsequently, as is the case as of the date of this Appeal, the "Permit Law" appears in Chapter 46 of the MCS Ordinances.

For purposes of simplification, the Ordinance under attack is referred to throughout this brief as Chapter 46, § 1 & 1.1, and references to its ancestor ordinances will be designated by CCS Ordinance # ____ or MCS Ordinance # ____, as is appropriate. All of the ancestor ordinances have been copied in the Appendicies herein and made a part hereof.

Subsequent to the filing of the original Complaint, Appellee was forced to amend same because the City, through its Council, amended Chapter 46, § 1 and Chapter 46, § 1.1 of the Code of the City of New Orleans.

The City filed a mere "general denial" to all of the allegations contained in the original Complaint.

Interrogatories were filed by Appellee which were eventually answered by the City after a great deal of effort on the part of Appellee.

The District Court indicated that this matter was to be handled on the basis of "stipulated facts" and corresponding Motions for Summary Judgment. Appellee filed her Motion for Summary Judgment supported by reference to the original Complaint, Affidavits of Appellee and another individual together with the Answers by the City to the Interrogatories. Appellee filed her statement of Material Facts. The City submitted it's Motion for Summary Judgment supported by a brief Statement of Material Facts.

The District Court denied Appellee's Motion for Summary Judgment, granting the City's Motion by Judgment of October 9, 1973, and thereby dismissing Appellee's Complaint.

Appeal was taken to the Fifth Circuit Court of Appeals which reversed the District Court after a thorough treatment of the applicable law and facts. See Appendix "B" of the Appellant's Jurisdictional Statement cited at *Dukes v. City of New Orleans*, 5 Cir. 1974, 501 F.2d. 706.

The City presented a Jurisdictional Statement as to this Court which rests upon the assumption that the Lucky Dog push carts are so "charming" and "nostalgic"

that the City was justified in denying Appellee her livelihood in one of the most lucrative commercial areas in the City of New Orleans where she has conducted her business activities for two years and not eight as the Lucky Dog push carts.

The City has presented in its "Brief On Behalf of Appellant" reasoning which tracks the arguments made in its Jurisdictional Statement in that it rests upon the pivotal arguments that because the Vieux Carre area of New Orlenas is so important to the economy of New Orleans, and because the Lucky Dog carts themselves have been photographed, and because people eat hot dogs in the French Quarter, the discriminatory scheme practised against Appellee is justified. The Appellant waxes more eloquently than before over the "charm and beauty" of the Viuex Carre area being preserved by the seedy hot dog carts, and points out proudly that the Lucky Dog carts have been noted in various and sundry culinary critiques of the City's food. See p. 72 of Appellant's Appendix - Vol. II. Of course, the Appellant-City completely ignores the fact that at the time all of these observations were made by the various and sundry critics as to the palatability of the hot dogs of the Lucky Dog carts, there was no comparison with other mobile carts such as were used by Appellee when she was allowed to earn a living in the Vieux Carre area with her mobile carts. The Appellant-City conveniently makes no mention of the fact that Nancy Dukes hasn't been on the streets of the Vieux Carre since October, 1973 when the District Court dismissed her complaint, and for some time before that. With the exception of the local newspaper account as appears at p. 66 of Appellant's Appendix, Vol. II, all of the other references to the

mention of the Lucky Dog carts were made in 1974 and 1975. Would this have been the case had Nancy Dukes been allowed to push her carts about the Vieux Carre and French Quarter?

I.

ARGUMENT OF FACT AND LAW

As indicated earlier, the Judgment of the Fifth Circuit Court of Appeals is not a proper subject, at this time, of an "appeal" under 28 USC § 1254 (2).

The Appellant has cited at pp. 7-12 of its Brief a number of cases, all of which it is submitted, do not deal with the issue of "finality" of Judgment which is crucial to this Court asserting jurisdiction by its interpretation of 28 USC § 1254(2).

The Appellant cites *City of Chicago v. Atchison, T. & S.F.RY.Co.*, 357 U.S. 489, 78 S.Ct. 1063(1958), as authority for this Court asserting jurisdiction. Appellee submits that the language as appears at p. 1067 of 78 S.Ct. in the *City of Chicago* Case, supra, cannot be reconciled with the Judgment presented to this Court for review, as is indicated as follows:

> "By its decision the Court of Appeals resolved all disputed questions between the parties. . . .; all that remains for the district court in remand was to formally enter judgment for the plaintiff. . . ."

Clearly, this is not our situation as appears from a reading of a portion of the Fifth Circuit Judgment as appears at p. 21a of Appellant's Jurisdictional Statement as follows:

> "Finding the arguments unconstitutional as applied, we reverse the summary judgment for the City entered below. Since the Trial Court did not find the ordinance's discrimination unconstitutional, it did not consider whether the "grandfather clause" was severable from the ordinance's simultaneous general preclusion of push cart hot dog vendors from the Quarter, that is whether the ordinance should be read as a total nullity, or whether it should be read to preclude the operation of all pushcart hot dog dealers in the Vieux Carre. We remand for the district court to resolve this question and enter judgment accordingly."

Appellee submits that the Fifth Circuit Court of Appeals left unresolved the issue of the severability of the "grandfather clause" and depending upon the District Court's ruling on this issue, will result in a decision which nullifies the entire "Permit Law" or simply a portion of same. Certainly, if the entire Ordinance is found unconstitutional, it is very likely that Appellant will appeal the decision of the District Court. On the other hand, if the District Court finds that this "grandfather clause" is severable from the Ordinance, then this apparently will precipitate an appeal by Appellant, and perhaps the Appellee. The treatment of all of the issues herein by the District Court if the Fifth Circuit Court of Appeals Judgment is sustained will necessarily color the issues to be presented by this Court.

Appellee submits that all of the issues to be resolved between the parties in controversy herein have not been dealt with by means of the Judgment of the Fifth Circuit Court of Appeals as appears in Appellant's Jurisdictional Statement at p. 10a - 21a. Appellees also submit that the other cases cited by Appellant-City are inapplicable to

our situation. We have a supposed appeal under 28 USC § 1254(2), and not under the old Judicial Code or under the purview of 28 USC 1257(2), the latter dealing with appeals from State court judgments, laws, or statutes litigated in the state courts. As appears at p. 10 of Appellant's Brief, the Appellant relies on *Cox Broadcasting Corporation v. Cohn* ____ US ____, 95 S.Ct. 1029 (1975), which dealt with 28 USC 1257(2) and *not* 28 USC 1254(2). The *Cox* Case, supra, dealt with an appeal through issues litigated in the State Court, never having run the gauntlet of the Federal judicial system. The Appellant cites a number of cases interpreting 28 USC 1257(2), which latter statute is certainly not in question as to the jurisdictional issues presented herein. Appellant goes further and cites such cases as *Gillespie v. U. S. Steel*, 379 US 148, 85 S.Ct. 308 (1964) which interpreted 28 USC 1291, and *not* 28 USC 1254(2), the latter under which Appellant seeks this Court to assert jurisdiction. 28 USC 1291 deals specifically with the propriety of appeals from U. S. District Courts to the United States Courts of Appeal, which is not the case herein.

The only case which Appellant cites which could have any possible relevance to an interpretation of 28 USC § 1254(2) is *Dutton v. Evans*, 400 US 74, 91 S.Ct. 210 (1970); and in that case there was an obvious "final determination" by the Fifth Circuit Court of Appeals relative to a habeas corpus petition filed in the federal system alleging violations of constitutional rights occurring in a state court proceeding. There was never any question as to the "finality" of that Judgment of the Fifth Circuit Court of Appeals which was reviewed by this court. Such is not the case herein as pointed out above.

Appellee submits the above in view of the fact, as stated previously, that jurisdictional statutes such as 28 USC § 1254(2) have been consistently construed ". . . .with precision and with fidelity for the terms by which Congress has expressed it's wishes. . . ." *Cheng Fan Kwok v. INS*, 392 US 206, 212, 88 S.Ct. 1970, 1974 (1968), cited at *Palmore v. United States*, 41 US 389, 93 S.Ct. 1670, 1675 (1973). This Court has always been prone to accord a rather strict construction of statutes authorizing appeals. *Palmore v. United States,* supra; *Fornaris v. Ridge Tool Co.*, 400 US 41, 42 n. 1, 91 S.Ct. 156, 157 (1970). Appellee naturally assumes that if the Court is going to take the attitude as expressed in the foregoing cases, and others, it will only entertain argument on 28 USC 1254(2), and not accept the language in cases interpreting other jurisdictional statutes as noted above, and as cited by Appellant.

Though this Court has liberally construed appeals on "jurisdictional questions", in view of the recent amendment to 28 USC § 1254, allowing these appeals to be construed as Writs of Certiorari (see *City of ElPaso v. Simmons*, 379 US 497, 85 S.Ct. 577 [1965]), this Court has still indicated a distaste for "piecemeal appellate review" before it. *Goldstein v. Cox*, 396 US 471, 90 S.Ct. 671 (1970).

Appellee submits that the import of the Judgment of the Fifth Circuit indicates the "tenative" and the incomplete" status of this matter at this time; and further, this is not a matter which can be or should be considered by this Court at this time. The weight and impact of the Fifth Circuit opinion depends on what the district court would do under a remand situation.

THERE IS NOTHING "CHARMING" OR "NOSTALGIC" ABOUT THE LUCKY DOG PUSH CARTS: AND CERTAINLY, THERE IS NO "COMPELLING STATE INTEREST" TO JUSTIFY THE "INVIDIOUS DISCRIMINATION, AS IS APPARENT FROM THE LEGISTION" PRACTICED AGAINST APPELLEE. THIS SCHEME OF DISCRIMINATION, AS IS APPARENT FROM THE LEGISLATIVE HISTORY OF THE "PERMIT LAW", HAD BUT ONE PURPOSE AND THAT WAS TO FAVOR THE ECONOMIC INTEREST OF LUCKY DOGS, INC., TO THE UNJUSTIFIED DETRIMENT OF APPELLEE: AND, THEREFORE CHAPTER 46, § 1 & 1.1 OF THE NEW ORLEANS CITY CODE IS UNCONSTITUTIONAL INSOFAR AS ITS "GRANDFATHER CLAUSE" IS CONCERNED.

ARGUMENT OF FACTS

As noted before, a consideration of the FACTS which precipitated the filing of the Civil Rights Complaint herein together with a development of the Legislative History of Chapter 46, § 1 & 1.1 are absolutely essential to this Court's consideration of this matter.

To Appellee's knowledge, the FACTS cited below have never been contested.

The FACTS are as follows:

A. Appellee Nancy Dukes *was* in the business of selling food, drinks, confections and novelties from "movable push carts", on the public streets, sidewalks and/or public and private places in downtown New Orleans. The Vieux Carre, otherwise called the "French

Quarter" and more recently referred to as the "Central Business District" was included in "downtown New Orleans" when Nancy Dukes was allowed to sell "hot dogs".

The prime source of Appellee's business *was* the Vieux Carre, particularly during the summer months of May through September, when average weekly sales totaled approximately $385.00. Appellee Nancy Dukes employed various salesmen on a commission-percentage basis. Until MCS Ordinance #4822 (see Appendix "M") and the introduction of the "grandfather clause", Appellee was able to obtain and did in fact possess *all* of the permits required by the City of New Orleans to vend "hot dogs" in the Vieux Carre area.

Prior to the introduction of the "grandfather clause" into the "Permit Law" at Chapter 46, § 1 & 1.1 of the City Code, the City Fathers had written a discriminatory scheme into the "Permit Law" by establishing a ban on the issuance of ALL PERMITS in the Vieux Carre with the exception of certain specially designated "exempt permits", one of which was that permit dealing with "hot dog" and "hot tamale" push carts. This "discriminatory scheme" of recognizing certain "exemptions" to a general ban on the issuance of ALL PERMITS in the Vieux Carre area was accomplished by an amendment to the "Permit Law" through MCS Ordinance #4744 passed in December of 1971. See Appendix "K". The Permit dealing with "hot dog" and "hot tomale" push carts which was exempt from the general ban appeared at Paragraph 5 of the "Permit Law" of Chapter 46, § 1 & 1.1.

Even with the passage of MCS Ordinance #4744 in December of 1971 which first established the general ban subject to certain exceptions, a reading of the various

MCS Ordinances amending the "Permit Law" indicates that from passage of MCS Ordinance #4439 in December of 1970 (see Appendix "I") up until the passage of MCS Ordinance #4822 in April of 1972 (see Appendix "M"), it was permissible to operate a "hot dog" push cart in the Vieux Carre area upon the obtaining of a permit described in Paragraph 5 of the "Permit Law".

However, despite the clear import of the law, on January 17, 1972, Appellee Nancy Dukes' employee was arrested for violating the "Permit Law" of Chapter 46, § 1 & 1.1 (see p. 86 of Appellant's Appendix, Vol. I - Memorandum In Support of Defendants' Motion For Summary Judgment). Apparently, it made little difference to Appellant that Appellee Dukes at the time of the arrest of her employee possessed a valid permit to vend "hot dogs" under the purview of Paragraph 5 of the "Permit Law".

It was this display of an obvious refusal by the Appellant-City to abide by its own laws together with a grave concern that the "exemptions" to the general ban on issuance of permits in the Vieux Carre which bespoke of a "discriminatory scheme" not justified by any "compelling state interest", that precipitated Appellee Dukes original Complaint. Appellee Nancy Dukes not only sold "hot dogs" from "movable push carts", but she sold ". . . .drinks, confections and novelties. . . ." from the same "movable push carts". The unwarranted arrest and subsequent amendment to the "Permit Law" made it clear to Appellee Nancy Dukes that the Appellant-City was not only going to prevent her from selling "hot dogs" from "movable push carts", but it was going to prevent her from selling anything else from her "movable push carts".

Also, Appellee Nancy Dukes was concerned about the "discriminatory scheme" established by the "grandfather clause" introduced into the "Permit Law" by MCS Ordinance 4822 in April 1972. (See Appendix "M") If there was ever a legitimate question as to whether Appellee Dukes could operate in the Vieux Carre with a permit issued under Paragraph 5 of the "Permit Law", which Appellee Dukes submits there was not, the introduction of the "grandfather clause" mooted this question. Appellee Nancy Dukes obviously qualified, even in the face of the "discriminatory scheme" established by the "exemptions" to the general permit ban in the Vieux Carre. However, under no circumstances could she ever qualify under the terms of the "grandfather clause" in that it required her presence continually for a period of eight years prior to January of 1972. Appellee Nancy Dukes had been in the Vieux Carre a mere two years.

Not only was Appellee Dukes faced with the reality that Appellant-City had no intention by abiding by its own legislative fiat (witness the arrest of January, 1972, when Appellee Dukes' activity was clearly condoned by MCS Ordinance #4744 for which she had obtained a permit), but even if she could force Appellant-City to obey its own laws, the City was determined to favor Lucky Dogs, Inc., and the sale of their "hot dogs" to the exclusion of all others (witness the "grandfather clause" of MCS Ordinance #4822 whose arbitrary eight year cut-off eliminated every "hot dog" peddler except Lucky Dogs, Inc.)

In view of the foregoing, it was no surprise to Appellee Dukes after she had filed her original Complaint on August 1, 1972, that the Appellant-City proceeded to

"cover its tracks" in again amending the "Permit Law" through MCS Ordinance #4957 passed in September of 1972. See Appendix "N". Obviously, the Appellant-City was attempting to "cover its tracks" with MCS Ordinance #4957. Appellant–City realized that had failed to delete the exemption of Paragraph 5 of the "Permit Law" which dealt with "hot dog" vendors when it passed MCS Ordinance 4822 in April, 1972. Between April, 1972 with the passage of MCS Ordinance #4822, in the face of the language of MCS Ordinance #4744 of September of 1971, the Appellant-City was faced with the potentially embarrassing situation of an obvious conflict between the "exemption" to "hot dog" push carts and the "grandfather clause" in their application. Had the law remained as it was, Appellee Dukes could have qualified under Paragraph 5 of the "Permit Law" insofar as the law gave this "exemption" to her as a "hot dog" vendor; however, at the same time, there would have been a conflict with the "grandfather clause" insofar as Appellee Dukes could have not qualified for same. Thus, MCS Ordinance 4957 was passed in September of 1972 specifically deleting as an "exemption" to the general ban of issuance of permits in the Vieux Carre, Paragraph 5 of the "Permit Law".

Appellee Dukes submits that it is the obvious intention of Appellant-City to completely ELIMINATE any activity on her part in one of the most lucrative economic areas of the City of New Orleans, i.e. the Vieux Carre. Appellee Dukes further submits that this is not a case of REGULATION.

This scheme of ELIMINATION by implementation of an "invidious discrimination" is justified by Appellant-City by the fact that the Vieux Carre area possesses a "unique charm and beauty", and that it is

essential to the preservation of this "unique charm and beauty" that the Lucky Dog push carts be maintained in a sole monopolistic status, aside from the quality of their hot dogs or the possibility that Appellee Dukes could provide not only a more attractive "push cart", but a better quality food product.

Implied in Appellant-City's argument is the suggestion that the above described "scheme of discrimination" is but an isolated incident to preserve the "charm and beauty" of the Vieux Carre by use of its "Permit Law" ELIMINATING all competition to Lucky Dogs, Inc. While the Legislative History of the "Permit Law" of Chapter 46, § 1 & 1.1 prior to the latter part of 1971 indicates a genuine REGULATORY scheme controlling various street occupations (see Appendices A-E; Appendices G-J) with the onset of Appellant-City's efforts to ELIMINATE Appellee Dukes "right to a livelihood" a parallel effort to ELIMINATE solicitations for money, subscriptions, advertising, gifts and magazines for "charitable, religious, educational and benevolent purposes" appears. It is no coincidence that at the same time Appellant-City was attempting to ELIMINATE Appellee Dukes' "right to earn a livelihood" by passage of the "exemptions" in the form of MCS Ordinance #4744, the City also passed a companion amending MCS Ordinance #4746 (see Appendix "L") in the same month of December of 1971 which sought to ELIMINATE solicitation for charity, religion, education and benevolence in the Vieux Carre. At a time when everyone was attempting to encourage charity, religion, education and benevolence, the City of New Orleans was bent on discouraging same, together with ELIMINATING

Appellee Dukes' "right to earn a living". Though not at issue in this Appeal before the Court, the writer of this Brief in another suit successfully attacked the "Permit Law" as it was amended by MCS Ordinance #4746 and had same declared unconstitutional insofar as it interferred with the legitimate "religious activities" of the Krishna Consciousness Movement. See *International Society for Krishna Consciousness, Inc., et al v. City of New Orleans*, D. C. E. D. La. (1972), 347 F. Supp. 945. The *Krishna* Case, supra, is not cited to confuse or distract this Court from the immediate issues before it, but only to concretely demonstrate the extremes that Appellant-City was willing to go in preserving the "charm and nostalgia" of the Vieux Carre. The example of the *Krishna* Case, supra, and the Legislative History of the "Permit Law" particularly around the latter part of 1971 through 1972 belie any suggestion that there is any "compelling state interest" which the Appellant-City can legitimately expound on to justify the complete ELIMINATION of Appellee Dukes as a business entrapreneur of "hot dogs" in the Vieux Carre area.

Subsequent to the introduction of the "grandfather clause" through MCS Ordinance # 4822 in April, 1972, Appellant-City pushed Appellee Dukes further away from the perimeters of the Vieux Carre by expanding the area in New Orleans over which the "grandfather clause" had sway. MCS Ordinance #5085 passed in February of 1973 and MCS Ordinance #5086 passed at the same time (see Appendices "O" & "P") designated that not only would Appellee Dukes be prevented from operating in the "charming and nostalgic" Vieux Carre,

but would be prohibited from operating in the entire Central Business District of New Orleans.

With the passage of MCS Ordinances #5085 & 5086 in February, 1973, the "grandfather clause" of the "Permit Law" held sway over an area twice the size of the "charming and nostalgic" Vieux Carre which had been the original target of this invidious "grandfather clause". Not to forget the "exceptions" previously granted in MCS Ordinance #4744 in December of 1971, the Appellant-City passed in February of 1973 together with the foregoing two Ordinances, MCS Ordinance #5087 which dealt with all of the "exceptions" to the general ban on issuance on permits in not only the Vieux Carre, but now the Central Business District. See Appendix "Q" for MCS Ordinance #5087.

Appellee Dukes submits that it is this last triumverate of Ordinances passed in February of 1973 (see Appendices "O", "P" & "Q") expanding the operation of the "exemptions" to the general permit ban and the operation of the "grandfather clause" over twice the geographic area originally targeted by these "exceptions" and the "grandfather clause", that renders as completely specious and outrageous the suggestion by Appellant-City that the "exemptions" to the "Permit Law" and the "grandfather clause" were intended to preserve the "charm and nostalgia" of the Vieux Carre area, and that the "charm and nostalgia" of the Vieux Carre area is somehow enhanced by the presence of Lucky Dog push carts which sit upon two "quaint" balloon tires supporting a steal tube fram upon which sits an inarticulately made tin shell which is supposed to represent a "hot dog". The Vieux Carre area of New Orleans can be easily discerned and separated from the Central Business District of New

Orleans. If the Lucky Dog carts somehow or other add to the "charm and nostalgia" of the Vieux Carre, the question is posed, "What do the Lucky Dog carts do for the 'charm and nostalgia' of the concrete and asphalt of the business hub of New Orleans?" How does the presence of Lucky Dog carts in the business section of New Orleans add to the "charm and nostalgia" of a completely separate area of the Central Business District, i.e. the Vieux Carre? For that matter how does the presence of Lucky Dog push carts in the business area proper of New Orleans which is encompassed in the Central Business District by definition of the foregoing Ordinances add anything to the Business District proper except to provide a monopolized outlet for the sale of hot dogs on the asphalt and concrete pavements and streets of the business area of New Orleans, aside from the Vieux Carre? By definition of the triumverate of MCS Ordinances (see Appendices "O", "P" & "Q") the "Permit Law" makes no distinction as to the Vieux Carre area and the Central Business District. As noted above, initially the "grandfather clause" and "exemptions" to the general ban on the issuance of permits was directed to the area known as the Vieux Carre. The last triumverate of MCS Ordinances noted above expanded the geographical area over which the "exemptions" to the general permit ban and the "grandfather clause" were applicable. Now Appellant-City would have this Court ignore the import of its written law for which Appellant-City has been shown to have no respect in the past, and ask this Court to believe that the only reason for the "grandfather clause" and the "exemptions" to the general ban on the issuance of permits was to preserve

the "charm and nostalgia" of the Vieux Carre. Nothing is said about the effect that these Lucky Dog push carts would have or could have upon the "charm and nostalgia" of the concrete and asphalt of the business district of New Orleans. Obviously, the Legislative History of all of the foregoing Ordinances, themselves, are the best evidence of the Legislative chicanery practiced by Appellant-City. Appellee Dukes submits that Appellant-City is not serious about any of the arguments presented in its Brief, particularly as it seeks to rationalize this "invidious discrimination" by reference to the "charming and nostalgic" effect the Lucky Dog push carts have upon the Vieux Carre. Appellee Dukes submits that the Appellant-City's failure to deal in any way with the "charming and nostalgic" effects of the Lucky Dog push carts upon the business area proper of the City of New Orleans in order to justify the "exemptions" and "grandfather clause", allows this Court to completely ignore all of their arguments.

Before going on to the treatment of the applicable law, Appellee Dukes would treat with Appellant-City's new found post cards, magazine covers and culinary critiques. Obviously, this was inspired by Appellee Dukes effort to show this Court by photographic representation in her Motion To Dismiss and Brief In Support Thereof of the exact nature of these Lucky Dog push carts. Beginning at p. 64 of Appellant's Appendix, Vol. II, and following, there is presented what purports to be two post cards of the French Quarter, two photographs from newspapers depicting the Lucky Dog carts, a culinary critique accompanying one of those newspaper photographs, the cover of the

New Orleans magazine, an account of the Dukes decision before the Fifth Circuit Court of Appeal appearing in a local newspaper, a culinary critique appearing in another magazine of March, 1975, together with language from one of the local papers indicating that someone in the movie business noticed the Lucky Dog carts. It is glaringly apparent to Appellee Dukes that with the exception of a photograph which, by accident, depicts a Lucky Dog push cart as of April 7, 1973, there is not a scintilla of evidence to show that there was such attention paid to these Lucky Dog carts prior to October of 1973, the latter date being that of the dismissal of Appellee Dukes suit. It is no wonder to Appellee Dukes that the Lucky Dog carts are now supposedly eulogized and commented on insofar as they are the *only* "hot dog" push carts in the quarter. What else would one expect? Appellee Dukes would point out that none of this evidence was presented before Judge Gordon in making his decision as is obvious from its import. It didn't exist until after the monopoly of Lucky Dogs, Inc. was recognized not only in the Vieux Carre, but all over the business district for the City of New Orleans.

Finally, Appellee Dukes would point out to this Court that as appears at Appellant's Appendix Vol. II at p. 31 - 63, much is made by Appellant-City over the unique aspects of the Vieux Carre. This is "well and good". However, Appellee Dukes would point out that the "exemptions" to the general permit ban of the "Permit Law" and the "grandfather clause" of same cover an area which is twice the size of the Vieux Carre. Appellee Dukes suggests that Appellant-City produce any such self-serving propaganda for the

business district proper of the City of New Orleans over which the "exemption" and "grandfather clause" have absolute sway as law.

ARGUMENT OF FACT AND LAW

The Fifth Circuit Court of Appeals obviously relied heavily upon this Court's treatment of another "invidiously discriminating" law as appears in *Morey v. Doud*, 354 US 457, 77 S.Ct. 1344 (1957). Appellee Dukes submits that the explicit statements of *Morey*, supra, are controlling. In *Morey*, supra, as here, there was a "Permit Law", *Morey* dealing with the sale of money orders in the State of Illinois, and our instant case dealing with the sale of "hot dogs". Appellee Dukes is concerned about the "statutory discriminations" contained in the City of New Orleans' "Permit Law" as was this Court in *Morey*. Appellee Dukes submits that the language of this Court in *Morey* as appears at p. 1349 of 77 S.Ct. is controlling, and is cited as follows:

> "In determining the constitutionality of the Acts' application to Appellees in the light of its exception of American Express Money Orders wer start with the established proposition that the 'prohibition of the equal protection clause goes no further than the invidious discrimination'. *Williamson v. Lee Optical of Oklahoma* 348 US 483, 489, 75 S.Ct. 461, 465, 99 Law.Ed. 563. The rules for testing a discrimination have been summarized as follows:
>
> '1. The equal protection clause of the Fourteenth Amendment does not take from the

> State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regards, and avoids what is done only when it is without any reasonable basis and therefore it is purely arbitrary.
>
> '2. A Classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.
>
> '3. When the classification in such law is called in question, if any state of facts reasonably can be conceived would sustain it, the existance of that state of facts at the time that the law was enacted must be assumed.
>
> '4. One who assails the classification of such a law must carry the burden of showing that it does not rest upon any rational basis, but it is essentially arbitrary.'
>
> "*Lindsley v. Natural Carbonics Gas Co.*, 220 US 61, 78-79, 31 S.Ct. 337, 340, 55 Law. Ed. 369."

Appellee Dukes submits that Appellant's treatment of the constitutional issues in its Biref can best be described as a recitation of language of this Court without any indication or treatment of said language to the relevant issues herein. Appellant-City essentially provides no contextual reliability in its "Quote and Quip" treatment of the language of this Court. Appellee Dukes submits that the above cited language of *Morey* together with subsequent language of this Court to be noted in its entire context is a more appropriate treatment in arguing as to the "standard" to be applied to the "Permit Law" of the New Orleans City Code as presented herein.

The next significant statement as to the "test" or "standards" to be applied to any potentially "discriminatory laws" appears in *McGowan v. State of Maryland*, 366 US 420, 81 S.Ct. 1101, (1961). In *McGowan*, the so-called "Sunday Laws" were under attack. Though this Court affirmed the validity of these "Sunday Laws", it again dealt with the "standard" to be applied to potentially "discriminatory laws" as appears at p. 1105 and 1106 at 81 S.Ct. as follows:

> "The standards under which this proposition is to be evaluated have been set forth many times by this Court. Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The Constitutional safeguard is offended only if the classification rests on grounds solely irrelevant to the achievement of the State's objective. State legislatures are assumed to have acted within that Constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. See *Kotch v. Board of River Port Pilots Com.'rs*, 330 US 552, 67 S.Ct.910, 91 Law Ed. 1093; *Metropolitan Casualty Ins. Co. of New York v. Brownell*, 294 US 580, 55 S.Ct. 538, 78 Law.Ed. 1070; *Lindsley v. Natural Carbonic Gas Co.*, ...; Atchison, T & S.F. R. Co. v. Mathews, 174 US 96, 19 S.Ct. 609, 43 Law.Ed.909."

At pp. 1105 and 1106 of 81 S.Ct., this Court went on to find that the legislature could reasonably find that the Sunday sale of exempted commodities was necessary for either the health of the community or the

enhancement of the recreational atmosphere of the day as it concerned citizens who enjoyed certain recreational facilities. Though the Court found that the "record" was barren of any indication that the foregoing "reasonable basis" did not exist, at p. 1106 of 81 S.Ct., this Court in *McGowan* went on to cite certain language which is significant to our consideration, as follows:

> "Secondly, Appellants contend that the statutory arrangement which permits only certain Anne Arundel County retailers to sell merchandise essential to, or customarily sold at, or incidental to, the operation of bathing beaches, amusement parks, et cetra, is contrary to the 'Equal protection' laws because it discriminates unreasonably against retailers in other Maryland counties. But we have held that the Equal Protection Clause relates to equality between persons as such, rather than between areas and that territorial uniformity is not a constitutional pre-requisite. . . . ."

The foregoing language of *McGowan* is certainly important to our consideration insofar as we had a "person", i.e. Appellee Dukes, being discriminated against by operation of "exemptions" and the "grandfather clause" of the City "Permit Law", all of which operates in the *same* "territorial limits" of the central business district. Appellee Dukes again points out that prior to the passage of the "grandfather clause" in April of 1972, she had operated her "hot dog" push carts in the Vieux Carre area without incident with the exception of the unlawful arrest of her employee in January of 1972 in the face of Ordinances which clearly allowed her to operate with a permit. The fact that now Appellee Dukes finds herself "outside" the

territorial limits of the Central Business District which includes the Vieux Carre, is of no moment. At the time that this "discriminatory scheme" was established, Appellee Dukes was a "person" within the same "territorial and geographical limits" occupied by Lucky Dogs, Inc.

Therefore, the question becomes one of establishing the "differences" which must be "real". Appellee Dukes notes the case of *Cipriano v. City of Houma*, 395 US 701, 89 S.Ct. 1897 (1969); lower court decision at 286 F.Supp. 823 (D.C. E.D.La. 1968). Though the three-judge panel's decision ruling that the State of Louisiana could set its own standards as to how its people should determine the desirability of issuing public utility revenue bonds was reversed by this Court, this Court's treatment of *Cipriano* in its decision indicates to Appellee Dukes that the language of *Cipriano* in the lower court was given an "expanded import", and is certainly pertinent to our consideration insofar as it sets forth a standard which was recognized by this Court in its reversal, as appears at p. 825 of 286 F.Supp. as follows:

> ". . . .The Equal Protection Clause does not command the state legislatures to make their laws conform to hydraulic principles by seeking the common-and lowest-level. 'Equal protection does not require identity of treatment. It only requires that classification rest on real and not feined differences, that the distinction have some relavance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary.' *Walters v. City of St. Louis*, 1954 347 US 231, 237, 74 S.Ct. 505,

> 509, 98 Law.Ed. 660. In considering whether a classification rests on real differences, we must take into account the nature and relative importance of the subject with respect to which equality is asserted. . . ."

Again at p. 826 of 286 F.Supp. Judge Rubin, speaking for the three-judge panel noted language which defined those "tests" or "standards" to be applied to any potentially "Discriminatory law" as follows:

> "Mere classification does not of itself deprive a group of equal protection.[13] Older decisions taught us that legislation that differentiates between two classes is unconstitutional only if the discrimination is irrational arbitrary or capricious.[14] Only a few weeks ago the Supreme Court indicated that the principles are still vital. In holding that the one man, one vote principal of *Reynolds v. Sims* was applicable to the selection of Texas County Commissioners it said, 'The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invidious.' . . . .
>
> ". . . .Whether the distinction is invidious depends on the exact factual situation presented."

Appellee Dukes submits that Judge Rubin, as indicated in this Court's treatment of *Cipriano*, ignored the very crucial "compelling state interest" requirements set out in *Morey* and *McGowan*. This appears to be the case by this Court's language in *Cipriano* at p. 1899 of 89 S.Ct., which is cited as follows:

> "As we noted in *Kramer* supra, if a challanged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters

and denies it to others,[4] 'the court must determine whether the exclusions are necessary to promote a compelling state interest'. *Kramer v. Union Free School District No. 15*, Supra, at 627, 89 S.Ct. at 1890. Moreover, no less showing that the exclusions are necessary to promote a compelling state interest is required merely because of 'the question scheduled for the election need not have been submitted to the voters'. Id. at 629, 89 S.Ct. at 1890, M. 11"

Further this Court in *Cipriano* as appears at p. 1900 of 89 S.Ct. noted as to "compelling state interests", as follows:

". . . .Property owners, like non-property owners, use the utilities and pay the rates; however the impact of the revenue bond issued on them is unconnected to their status as property owners. Indeed, the benefits and burdens of the bond issue fall indiscriminately on property owners and non-property owners alike.

"Moreover, the profits of the utility systems' operations are paid into the general fund of the City and are used to finance city services that otherwise would be supported by taxes. Of course, property tax payers may be concerned with expanding and improving the City's utility operation; such improvements could produce revenues which eventually would reduce the burden on the property tax that support city services. On the other hand, non-property tax payers may feel that their interest as rate payers indicate that no further expansion of utility debt obligations should be made. Of course, these differences of opinion cannot justify excluding either group from the bond election, when, as in this case, both are substantially affected by the utility operation. For,

as we noted in *Carrington v. Rash* . . . .(citations). . . .'

'[f]encing out' from the franchise a sector of a population because of the way they may vote is constitutionally impermissable.'

"The challanged statute contains a classification which excludes otherwise qualified voters who are substantially affected and directly interested in the matter voted upon as are those who are permitted to vote. When, as in this case, the state's sole justification for the statute is that the classification provides a 'rational basis' for limiting the franchise to those voters with a 'special interest', the statute clearly does not meet the exacting standard of precision we require of statutes which selectively distribute the franchise. *Kramer v. Union Free School District No. 15*, supra, at 632, 89 S.Ct. at 1892. We therefore reverse the judgment of the district court."

Though *Cipriano* deals with the "elective franchise", Appellee Dukes submits that this decision indicated a trend showing greater concern by this Court for those "compelling state interests" than is initially indicated in *Morey* and *McGowan*. Further, Appellee Dukes submits that the language of *Cipriano* insofar as the deals with a "discriminatory scheme" is equally applicable to our situation where Appellee's "right to earn a livelihood" is, for all intents and purposes, ELIMINATED completely.

Cipriano was obviously a companion case to *Kramer v. Union Free School District No. 15*, 395 US 621, 89 S.Ct. 1886 (1969). Appellee Dukes submits that the language of *Kramer* goes further in spelling out those "compelling state interests" which are necessarily

required to be shown by Appellant-City when any "discriminatory scheme" is attacked as herein. At p. 1889 of 89 S.Ct. Justice Warren notes the need for "compelling state interest" in the "test" as follows:

> " 'In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interest which the State claims to be protecting, and the interest of those who are disadvantaged by the classification.' . . . .(citations) . . . .And, in this case, we must give the statute a close and exacting examination."

Appellee Dukes submits that *Kramer* makes the Legislative History treatment given in this Brief most important. The treatment of the Legislative History, which was completely ignored by Appellant, is perhaps the *only* method of determining those "interests" which City of New Orleans claims to be protecting. Of course, as pointed our previously, the Appellant-City falls very short in this area both as to Legislative History and the attempt to present self-serving propaganda which could not possibly have been available at the trial of this matter before the District Court.

Appellee Dukes submits that the cases of *Morey, McGowan & Cipriano* all lead to the conclusion so succinctly pointed out in *Kramer*, that the "facts and circumstances behind the law" must be gone into. Again, Appellee Dukes points out that Appellant-City falls far short of providing any of the "facts and circumstances behind the law". Appellant-City completely ignores the very import and clear language of its own laws, all as noted above.

More recently, the need of Appellant-City to show a "compelling state interest" was reiterated in *Weber v. Aetna Casualty & Surety Co.*, 406 US 164 92 S.Ct. 1400 (1972). Also, this Court indicated in *Weber* that it would not be satisfied with the simple "naming" of a "legitimate state interest" and required that there be some showing of how the statute itself "promotes" that interest, as indicated at p. 1405 of 92 S.Ct. in *Weber*, which is cited as follows:

> "The Louisiana Supreme Court emphasized strongly the state's interest in protecting 'legitimate family relationships' . . . .(citations). . . ., and the regulation and protection of the family unit have indeed been a venerable state concern. We do not question the importance of the interest; what we do question is how the challanged statute will promote it. As was said in *Glona*:
>
> > '[W]e see no possible rational basis . . . . for assuming that if the natural mother is allowed recovery for the wrongful death of an illegitimate child, the cause of illegitimacy will be served. It will, indeed, be far fetched to assume that women have illegitimate children so that they can be compensated in damages for their death.' . . . .(citations). . . .'
>
> "Nor can it be thought here that persons who shun illicit relations because of the offspring may not one day reap the benefits of workmen's Compensation."

Applicant-City has shown no such "compelling state interest" to justify the complete ELIMINATION of Appellee Dukes in the Vieux Carre area, much less in the Central Business District. The only "compelling state interest" it can muster is a time worn report on the significance of the Vieux Carre, of course, not mentioning the Central Business District, together with

numerous self-serving propaganda as to the quaintness of the Lucky Dogs, Inc. push carts at times when the Lucky Dog, Inc. push carts were obviously the only ones in the Vieux Carre area and Central Business District. The reasoning presented by Appellant-City is indeed specious. Even if Appellee Dukes would concede that somehow the "charm and nostalgia" of the Vieux Carre area is enhanced by the greasy Lucky Dog push carts, their could be no such concession as to the effect of the Lucky Dog push carts on the "charm and nostalgia" of concrete, steel and asphalt of the Business District proper.

Appellee-Dukes submits that it has been a very long time since this Court considered anything of the nature of the "grandfather clause" and "exemptions" presented through the facts of this case. However, Appellee Dukes submits that some light may be thrown upon this Court's consideration by a reading of a Florida case, *Eslin v. Collins*, ____ Fla. ____, 108 So.2d. 889 (1959). There, the Florida State Supreme Court held as unconstitutional a "grandfather clause" which operated exactly as the "grandfather clause" of the "Permit Law" of Chapter 46, §1 & 1.1 of the New Orleans City Code. In so declaring, the Florida Supreme Court cited those principles enunciated in *Morey, McGowan, Cipriano,* and *Weber*, as appears at p. 890 of 108 So.2d., as follows:

> ". . . .Ordinarily, as applied to the regulation of a profession, a Grandfather Clause exempts from the examination pre-requisite to obtaining a license, those who are already bona fide engaged in the practice of a profession being regulated for the first time. See *State ex rel Garrison v. Reeve*, 104

> Fla. 196, 139 So. 817, 79 A.L.R. 1119; *Doller v. Reid*, 1948, 308 Ky. 348 214 S.W.2d 584; *Watson v. State of Maryland*, 1910, 218 U.S. 173, 30 S.Ct. 644, 54 Law.Ed. 987; *Bent v. State of West Virginia*, 1889, 129 US 114, 9 S.Ct. 231, 32 Law. Ed. 623. 'Such exception proceeds upon the theory that those who have acceptably followed the profession in the community for a period of years may be assumed to have the qualifications which others are required to manafest as a result of an examination before a board of medical experts.' . . . ."

The Florida State Supreme Court went on to note at p. 891 of 108 S.2d in *Eslin* that the law treated those professionals who had been licensed two years differently and unequally from those that had been licensed for at least fifteen years as of the cut-off date cited therein. Further, the Florida Supreme Court went on to note that in each case, the professionals regulated, whether they had been practicing and licensed for two years or fifteen years, had received approximately the same type of training. This is noted at p. 891 of 108 So.2d in *Eslin* as follows:

> "We can conceive of no reasonable basis for the classification here attempted to be made. Both classes of naturopaths were required to take the same training and pass the examination required as a condition of obtaining a license to practice naturopathy."

And further, at pages 891 and 892 of 108 So.2d., the Florida Supreme Court in *Eslin* went on to treat further with that "grandfather clause" and its reasoning is particularly appropriate to our situation and speaks to our immediate problem, as is cited as follows:

"The purpose of the purported 'grandfather clause' of the Act was to save the right of naturopaths licensed for more than two years to continue in the practice. Assuming without deciding that the legislature could validly create such a closed class, we can conceive of no reasonable basis for the attempt here made to grant special privileges to a limited group, itself a closed class, within the larger closed class. Accordingly, it must be held that the legislative classification is abritrary and unreasonable and thus a denial to appellant of the equal protection of the law. See *Riley v. Lawson*, 106 Fla. 521, 143 So.2d 619; *State ex rel Voris v. Knott*, 135 Fla. 206, 184 So. 752; *Morey v. Doud*, 1957, 354 US 457, 469, 77 S.Ct. 1344, 1 Law.Ed.2d 1485; 11 AnJur., Constitutional Law, § 285 p. 1046."

The Florida Supreme Court recognized that there was absolutely no difference between the "two year" and "fifteen year" naturopath. In our case, there certainly is no difference between the Lucky Dog "hot dog vendors" and Appellee Dukes' "hot dog vendors". There is nothing so peculiarly "qualifying" about "spreading the mustard" for eight years as opposed to a mere two years that somehow or other qualifies the "invidious discrimination" practiced by Appellant-City's "grandfather clause".

Another Florida Case, *Mid-State Hauling Co. v. Mason*, ___Fla.___177 So.2d 206 (1965) is submitted to this Court's attention. The language as appears in *Mid-State Hauling* at p. 210 of 177 So.2d, is appropriate to our consideration, as follows:

"We cannot emphasize too greatly the fact we are dealing essentially with the so-called 'grandfather clauses'. The whole purpose of a Grandfather

Clause in a licensing statute is to exempt from statutory regulation, impose for the *first time* those persons already in the field who have followed the trade and may be presumed to possess necessary qualifications. In the case of *Commonwealth Air Transport v. Stuart*, 303 Ky. 69, 196 S.W.2d 866, at p. 869, the Kentucky Court said:

'In initial regulatory statutes they [grandfather clauses] satisfy "the dictates of fairness by affording sanction to enterprises heretofore established". *U. S. v. Maher*, 307 US 148, 59 S.Ct. 768, 771, 83 Law.Ed. 1162. They [grandfather clauses] serve to avoid hardships which would result from forcing a carrier to justify his existing business in terms of public convenience, and recognizes vested such rights as had grown up before the enactment of the statute.' "

The Florida Supreme Court in *Mid-State* went on to cite *Eslin* as its authority.

Appellee Dukes submits that this is indeed an instance of "first time" statutory regulation. Appellee Dukes was present and operating in the Vieux Carre area at the time of the passage of the "grandfather clause" via MCS Ordinance #4822 in April of 1972. While Appellee Dukes could understand an Ordinance which did not allow the issuance of any further "hot dog" vendor permits in the Vieux Carre, and later the Central Business District, it is absolutely irrational to her to suggest that Appellant-City could arbitrarily pick eight years as a cut-off date, and thereby completely excluding not only Appellee Dukes but all other "hot dog" vendors in the Vieux Carre, and later the Central Business District.

There are no "necessary qualifications" gained by individuals, whether they work for eight years or one year at selling hot dogs which could possibly be pointed out as a "real difference" upon which Appellant-City could justify this "discriminatory scheme" practice against Appellee Dukes. THERE ARE NO REAL DIFFERENCES UPON WHICH Appellant-City could have based its "exemptions" to the general permit ban and its "grandfather clause" to justify same as to "hot dog" vendors.

Finally, Appellee Dukes would treat with the right on her part to "earn a living", a right which is certainly protected by the United States Constitution, and is among those "rights and privileges" contained in same.

The "Right To Earn A Living" is so deeply rooted in our political and economic history that reference to it can be readily found from the most ancient jurisprudence. In discussing the "Privileges and Immunities" to which all citizens are entitled, Circuit Judge Washington in *Corfield v. Coryell*, C.C.E.D. La. 1823, 6 Fed. Cas. 546, indicated at pp. 551 and 552 as follows:

> The next question is, whether this act infringes that section of the Constitution which declares that the 'citizens of each state shall be entitled to all of the privileges and immunities of citizens in the several states?' The inquiry is, What are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their

becoming free, independant and sovereign. What these fundamental principals are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government, *the enjoyment of life and liberty with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety*; subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise, to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; *to have, hold and dispose of property, either real or personal*; and the exemption from higher taxes or impositions that are paid by the other citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added, the elected franchise, as regulated and established by the laws of the Constitution of the state in which it is to be exercised." (own emphasis)

From the above, it is apparent that the Right To Earn A Livelihood is certainly not a "right" to be ignored. Subject to reasonable regulation, it apparently enjoys the same posture and respect as the "elective franchise".

Without citing the language, this Right To Earn A Livelihood has been recognized in such landmark cases as *Yick Wo v. Hopkins*, 117 US 566, 6 S.Ct. 1064 (1886). The serious treatment by this Court in 1886 in

Yick Wo of a man's right to earn a living certainly established this basic and fundamental right as one of the foremost privileges in our American society.

The same reasoning of *Yick Wo* has been carried forward in such cases as *New State Ice Co. v. Liedmann*, 285 US 352, 52 S.Ct. 371 (1932).

More recently, the protective arm of this Court was again extended to shelter one's right to earn a living in the case of *Shapiro v. Thompson*, 394 US 618, 89 S.Ct. 1322 (1969). It was in *Shapiro* that *Corfield* was cited with approval.

CONCLUSION

The City of New Orlenas through Chapter 46, §1 & 1.1 of the Code of The City of New Orleans seeks to ELIMINATE the legitimate business activities of Appellee. It does not seek merely to REGULATE. This attempted without any "compelling state interest" other than as pointed out in Appellant's Brief and in this Brief of Appellee Dukes.

Appellee Dukes concedes that there is a "compelling interest" on the part of the City of New Orleans to protect its "economic welfare", and that of all of its citizens. However, there can be no conceivable "compelling state interest" to justify the favoring of one "hot dog peddler", i. e. Lucky Dog, Inc., in the Vieux Carre and Central Business District, while at the same time excluding Appellee Dukes from peddling her hot dogs as she had done in the same geographical area as Lucky Dogs, Inc. up until the passage of the "grandfather clause", not to forget the "exemptions".

Both Appellee Dukes and Lucky Dogs, Inc., are "hot dog peddlers", and neither has any more facility than the other to deliver their hot dogs to the waiting, anxious and hungry hoardes of "tourists and citizens" who want to "observe the charm and beauty that is the Vieux Carre" (also the Central Business District), while stuffing what is probably a second-grade hot dog dripping with chili, mustard and onions down their esophagi, all of which, we can concede, promotes the "economic welfare" of the City of New Orleans.

Respectfully submitted,

JOSEPH NEVES MARCAL, III
2176 Esplanade Avenue
New Orleans, Louisiana 70119
Phone: (504) 581-7331
Attorney for Appellee

APPENDIX "A"

15510.

Mayoralty of New Orleans,
City Hall, Feb. 20, 1942.
Calendar No. 16,250.

NO. 15,510 COMMISSION COUNCIL SERIES

AN ORDINANCE regulating and fixing the cost of permits issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors of merchandise, solicitors, canvassers, etc., for the holding of fish fries, parades; circuses and the holding of meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294-14,302, 14,434 and 15,347 C. C. S. and any and all ordinances and parts of ordinances in conflict herewith.

WHEREAS, in order to safeguard public safety, health, comfort and the general welfare of the people of New Orleans, it is necessary that proper supervision and regulations be imposed on all persons, firms or corporations, who in any way desire to use the public streets, sidewalks, or other public places, or private or public halls for the conduct of any business or calling, or the holding of any meetings or public entertainment; therefore

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SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That from and after the passage of this ordinance, every person, firm or corporation, who shall desire to use the public streets, sidewalks or public places for the conduct of any business or calling, or to hold meetings, or rallies, or public entertainments in private or public halls, shall first apply to and obtain from the Mayor of the City of New Orleans a permit according to the following schedule, which permit shall in each instance state the occasion for which it is issued and the length of time for which said permit shall be operated, said permit to be paid for at the time of issuance, by the applicant according to the following schedule:

A.—To sell Novelties, etc., on City streets during Carnival ..... [illegible]
For definite Canal Street location on Mardi Gras, an extra $1.00
For One-half year 5.50
For One Year 12.50

B.—To sell hot tamales, on foot or from push carts in city streets or public places, per year 10.00

C.—To sell candies, nuts and confections, on foot or from push carts in city streets or public places, per year 10.00

D.—To sell hot waffles on city streets, per year ..	10.00
E.—To peddle cooked food, cakes, pies, etc., per year	5.00
F.—To sell fruits and vegetables on foot or from push carts in city streets or public places, cannot sell in market area, per year	10.00
G.—To sell fruits and vegetables from animal-drawn or motor-propelled vehicles, cannot sell in market area, per year	25.00
H.—Fish frics, or other related parties, etc., per day	0.50
I.—To sell home-manufactured articles or home grown products, on foot	5.00
J.—To sell ice cream, ice cream bars, and related confections on foot or from push cars in city streets or public places, per year	5.00
K.—To sell razor blades, toilet articles, etc., in city streets or public places, per year	5.00
L.—Demonstrations of food products or devices in public places or markets, etc.	25.00
M.—To distribute samples, solicit, canvass, etc., on city streets or from house to house	15.00

N.—To follow carnival parade, maskers on trucks, etc., per truck, per day	1.00
O.—To advertise with music, on truck or on foot, or in costume, or for any other advertising stunt, per year	60.00
Per month	7.50
P.—To take photographs in city streets or other public places, per year	5.00
Q.—To operate hand organ in city streets per year	5.00
R.—To drive cattle through city streets from dairy to pasture, per year ..	1.00
S.—To move explosives through city streets, per day	1.00
T.—To conduct sale of goods, wares or merchandise in insurance, bankruptcy, mortgage, insolvent, assignees', receivers', trustees' removal or closing out sale, or sale of goods, ware and merchandise damaged by fire or otherwise, in accordance with Act 225 of 1932, per sale	50.00
U.—To operate automatic nickel vending machines, selling candy, cigarettes, soft drinks, etc., in streets or public places, per machine, per year	5.00
For penny vending machines, per machine, per year	2.50

V.—Weighing devices, etc., on sidewalks or in public places, for nickel machine, per machine, per year $5.00
For penny machines, per machine, per year 2.50

W.—To operate coin-operated electric piano, phonograph or other mechanical musical device in restaurant, soft drink stands, etc., per machine, per year 10.00

X.—To operate mechanical amusement devices of any kind or character, except iron claw machines, classified as games of skill, for nickel machines, per year 50.00
For penny machines, per machine, per year 10.00

Y.—To operate iron claw machines, per machine, per

registered or accepted
month .....

A-1—Circus permits, [illegible] sions, rides, etc., in addition to license .....

B-1—To operate games of sport or skill where admission is charged or fee collected in any manner, including putt-putt games, shooting galleries, archery, etc., per year 50.00

C-1—To conduct sport events where admission is charged or fee collected in any manner, and where annual license is not paid to the City of New Orleans:
Admission not more than 25c per event .. 2.50
Admission not more than 75c per event . 5.00
Admission more than 75c per event 10.00

D-1—For amateur and professional prize fights or boxing and wrestling contests:
Admission not more than 25c per event .. 2.50
Admission not more than 75c per event .. 5.00
Admission more than 75c per event 10.00

E-1—For entertainments, other than fairs given by the pastors of a church for the church benefit, dance reviews, plays, festivals, bazaars, etc., with or without music, where admission is charged, or where no admission is charged but subscription fees or contributions are collected:
Admission not more than 25c per event .. 2.50
Admission not more than 75c per event 5.00
Admission more than 75c per event 10.00

F-1—For Philharmonic or Symphonic recitals, operas or other entertainment of like nature, where admission is charged or fee or subscription collected in any manner:
Admission not more than 25c per event .. 2.50
Admission not more than 75c per event .. 5.00
Admission more than 75c per event 10.00

G-1—For orchestras in restaurants or business establishments for purposes of entertainment or dancing, where no admission is charged, per year 25.00
Per night 1.00

H-1—For music other than orchestras, for entertainment purposes or dancing where no admission is charged or fee exacted, per year 15.00

I-1—For music for entertertainment purposes or dancing where admission is charged or fee exacted in any manner, including jitney dances, etc., per year 50.00

J-1—For dancing where admission is charged:
Admission not more than 25c per event .. 2.50

Admission not more than 75c per event .. 5.00
Admission more than 75c per event: 10.00

K-1—Dances in private residences or private dances in public halls where no admission is charged, per night 0.50

SECTION 2. BE IT FURTHER ORDAINED, ETC., That in order to regulate peddling in the City of New Orleans, every peddler shall secure from the Mayor of the City of New Orleans a permit for peddling and said permit for peddling shall be issued only after the following information shall have been obtained from the peddler, viz:

A.—Full name and address of peddler.

B.—Kind and character of merchandise, goods, foods, or effects to be sold.

C.—Location or route over which the peddler intends to sell or distribute his wares, provided that, in no instance, shall any person having a bad character be permitted to obtain a permit.

SECTION 3. BE IT FURTHER ORDAINED, ETC., That permits issued under the authority of this ordinance shall be non-saleable and

[illegible] dividuals or as to location [illegible]

SECTION 4. BE IT FURTHER ORDAINED, ETC., That the Mayor shall prescribe such other rules and regulations as to the form of application for permits and their issuance, as may be required to carry out the full intent and purpose of this ordinance.

SECTION 5. BE IT FURTHER ORDAINED, ETC. That the Mayor may designate a Director of Permits who, subject to the direction of the Mayor, shall function as the head of the Permit Division and who shall sign all permits. The Mayor may also designate such inspectors, clerks and other assistants that may be necessary for the proper conduct of the Permit Division and shall fix their salaries.

SECTION 6. BE IT FURTHER ORDAINED, ETC., That it shall hereafter be the mandatory duty of the Director of Permits to transmit, day by day as collected by him, to the City Treasurer, all monies and fees received for the issuance of the aforesaid permits; and the City Treasurer upon the receipt of said monies and fees shall immediately deposit same in a special account to be kept separate and apart from the other funds of the City, to be designated as the "Permit Fund Account," from which special account disbursements shall hereafter be made by the City Treasurer as

provided in this section of this ordinance.

It is hereby ordered that all monies and fees now on hand in the accounts kept by the Director of Permits, heretofore collected by him for the issuance of permits, shall forthwith be transmitted by the Director of Permits to the City Treasurer for deposit in the aforesaid account; provided, however, that out of said monies and fees now on hand, and in the possession of the Director of Permits there shall be retained by him the sum of five thousand ($5,000.00) dollars, which amount shall then constitute the Contingent Fund of the Mayor to be expended by the Mayor at his discretion.

Whenever the said Contingent Fund of five thousand ($5,000.00) dollars herein ordered retained by the Director of Permits shall become exhausted or reduced to less than five thousand ($5,000.00) dollars, upon proper requisition made by the Director of Permits to the City Treasurer, duly approved by the City Auditor, the Director of Permits is authorized to warrant from, and the City Treasurer is authorized to pay out of the aforesaid "Permit Fund Account" an additional sum of five thousand ($5,000.00) dollars or such additional sum as may be necessary to bring the Mayor's Contingent Fund again up to the sum of five

thousand ($5,000.00) dollars; and additional requisitions by the Director of Permits for similar amounts may be made thereafter, under the same conditions aforesaid, whenever conditions require that the said Contingent Fund be replenished.

SECTION 7. BE IT FURTHER ORDAINED, ETC., That any person, firms and corporations violating the foregoing section of this ordinance, or any of the regulations prescribed in order to carry out its true intent and purpose shall be subject to a fine of not more than twenty-five ($25.00) dollars or imprisonment for not more than thirty (30) days, or both, at the discretion of the Recorder having jurisdiction over such violation; and each offense shall constitute a separate violation.

SECTION 8. BE IT FURTHER ORDAINED, ETC., That Ordinances Nos. 14,294; 14,333; 14,404 and 15,347 C. C. S., and all other ordinances or part of ordinances in conflict with provisions of this ordinance be, and the same are hereby repealed.

All permits for food, fruits and vegetables shall first be approved by the Market Division.

Adopted by the Commission Council of the City of New Orleans, Feb. 20, 1942.

G. E. WEAVER,
Clerk of Commission Council.
Approved: Feb. 20, 1942.
ROBT. S. MAESTRI,
Mayor.

A True Copy:
H. E. WRIGET,
Acting Secretary.

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APPENDIX "B"

17,989

Mayoralty of New Orleans.
City Hall, December 29, 1950.
Calendar No. 18,801.
NO. 17,989 COMMISSION COUNCIL SERIES.
By Mayor Morrison:
AN ORDINANCE to amend the title, the preamble and Section 1 (as such Section was last amended by Ordinance No. 16,865, C. C. S.) of Ordinance No. 15,510, C. C. S., entitled.

"An Ordinance regulating and fixing the cost of permits to be issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors of merchandise, solicitors, canvassers, etc., for the holding of fish fries, parades, circuses and the holding of meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294, 14,302, 14,434 and 15,347, C. C. S., and any and all ordinances and parts of ordinances in conflict herewith."

SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That the title of Ordinance No. 15,510, C. C. S., be and the same is hereby amended to read as follows:

"AN ORDINANCE regulating and fixing the cost of permits to be issued to any person, firm, corporation, or partnership, operating merchandise vending machines, and other vendors of merchandise, solicitors, canvassers, etc., and for the holding of fish fries, parades, circuses, meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294, 14,302, 14,434 and 15347, C. C. S., and any and all ordinances or parts of ordinances in conflict therewith.

SECTON 2. BE IT FURTHER ORDAINED, ETC., That the preamble of Ordinance No. 15,510, C. C. S., be and the same is hereby amended to read as follows:

"WHEREAS, in order to safeguard public safety, health, comfort and the general welfare of the people of New Orleans it is necessary that proper supervision and regulations be imposed on all persons, firms, corporations, or partnerships, who in any way desire to use the public streets, sidewalks, or other public places, or private places, or public halls for the conduct of any business or calling, or the holding of any

meetings or public entertainment."

SECTION 3. BE IT FURTHER ORDAINED, ETC., That Section 1 (as such Section was last amended by Ordinance No. 16,865, C. C. S.) of Ordinance No. 15,510, C. C. S., be and the same is hereby amended as follows:

AMENDMENT NO. 1

Delete all of lines one (1) through fifteen (15), (both inclusive) and insert in lieu thereof the following:

"SECTON 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That, from and after the passage of this ordinance, every person, firm, corporation, or partnership who shall desire to use the public streets, sidewalks or public places, or private places, or business establishments for the conduct of any of the business or callings hereinafter setforth, or to hold meetings or rallies, or public entertainments in private or public halls or places, shall first apply to and obtain from the Mayor of the City of New Orleans a permit according to the following schedules, which permit shall in each instance state the occasions for which it is issued and the date upon which it shall expire. Said permits shall be paid for by the

ules:"

AMENDMENT NO. 2

Delete all of paragraph "U" and insert in lieu thereof the following:

"U. To operate automatic coin vending machines (other than penny machines), selling candy, cigarettees, soft drink, or other articles of merchandise, per machine, per year. $5.00

For penny vending machines, per machine, per year ... $2.50

Adopted by the Commission Council of the City of New Orleans, January 5, 1951.

G. S. WEAVER,
Clerk of Commission Council.

Approved January 5, 1951.

deLESSEPS S. MORRISON,
Mayor.

A true copy:

W. J. ERIKSON,
Secretary to the Mayor.

APPENDIX "C"

17,633

Mayoralty of New Orleans,
City Hall, June 7, 1949.
Calendar No. 18,430.

NO. 17,633 COMMISSION COUNCIL SERIES.

BY MAYOR MORRISON:

AN ORDINANCE to amend Section 1, Paragraph "P" of Ordinance No. 15,510 C. C. S., commonly known as the Mayoralty Permit Ordinance.

SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That Paragraph "P" of Section 1 of Ordinance No. 15,510 C. C. S., be, and the same is hereby amended to read as follows:

"P-1. To take and sell photographs on City streets or other public places where parties photographed willingly pose for picture and picture is developed on spot where taken and there delivered to parties photographed $ 5.00

"P-2 To take and sell photographs on City Streets or in any other public places in any other manner than that described in the preceding paragraph 250.00

Adopted by the Commission Council of the City of New Orleans, June 17, 1949.

G. S. WEAVER,
Clerk of Commission Council.

Approved June 17, 1949.

deLESSEPS S. MORRISON,
Mayor.

A true copy:
W. J. ERIKSON,
Secretary to the Mayor.

APPENDIX "D"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, November 18, 1954

CALENDAR NO. 228

NO. 217 MAYOR COUNCIL SERIES

BY: MR. DUFFOURC MR. FITZMORRIS
MR. CASSIBRY MR. MOORE

AN ORDINANCE to amend and re-ordain Ordinance No. 15,510 C.C.S., entitled: "AN ORDINANCE regulating and fixing the cost of permits issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors of merchandise, solicitors, canvassers, etc., for the holding of fish fries, parades, circuses and the holding of meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294, 14,302, 14,434 and 15,347 C.C.S., and any and all ordinances and parts of ordinances in conflict herewith," by adding an additional paragraph to Section 1 thereof; and repealing all ordinances, or parts of ordinances, in conflict herewith.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Section 1

of Ordinance No. 15,510 C.C.S., be and the same is hereby amended by adding an additional paragraph at the end of Section 1 thereof, to read as follows:

> "In addition to the changes shown in the above schedule, each applicant shall be required to pay the sum of Twenty-Five Cents (25¢), for account of the Police Pension Fund, which additional sum shall be transmitted by the Collector of Revenue, day by day as collected by him, to the Chief of Bureau of the Treasury. At the end of each month the Chief of Bureau of the Treasury shall remit all such sums so collected for account of the Police Pension Fund to the Board of Trustees, Police Pension Fund, City of New Orleans.

SECTION 2. That all ordinances, or parts of ordinances, contrary to or in conflict herewith, be and the same are hereby repealed.

Adopted by the Council of the City of New Orleans December 16, 1954.

/s/ [illegible]
PRESIDENT OF COUNCIL

Delivered to the Mayor
on December 17, 1954 APPROVED: 21 Dec 54

Returned by the Mayor
on Dec 21 1954 at 11:00 A.M.

/s/ G.S. Weaver
CLERK OF COUNCIL

/s/de Lesseps S. Morrison
M A Y O R

MEMORANDUM TO CALENDAR ORDINANCE 228

Notice required by Sec. 3-113(5) of the City Charter should be published on this ordinance, giving summary thereon as follows:

> Said ordinance will require all applicants to pay the sum of twenty-five cents for account of the Police Pension Fund, in addition to the cost of permits required by Ordinance 15,510, C.C.S. for the purpose of operating in and on public streets and other public places, legal, coin-operated machines, of vendors of merchandise, solicitors, canvassers, etc., and for fish fries, parades, meetings, rallies and entertainments, etc.

APPENDIX "E"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, JANUARY 28, 1965

CALENDAR NO. 3261

NO. 3027, MAYOR COUNCIL SERIES

BY: COUNCILMAN KELLY

AN ORDINANCE amending Section 46-1 of Ordinance No. 828, M.C.S., known as the Code of the City of New Orleans, by adding paragraph (40) thereto and by adding Section 46-7 to Chapter 46 of said Code, relative to permit fees of $250.00 to be paid by transient merchants doing business in hotel rooms or other temporary quarters and regulating the conduct of said business.

SECTION I. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Section 46-1 of Ordinance 828, M.C.S., be and is amended by adding Paragraph (40) thereto, reading as follows:

> (40) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business, hires, leases, or occupies, either in whole or in part, a room, or

some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof, per location, per year, $250.00

SECTION 2. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Chapter 46 of Ordinance 828, M.C.S., be and is amended by adding the following Section thereto, to-wit:

SECTION 46-7. Permit for sales at retail in temporary quarters.

The words "transient vendors, canvassers, solicitors and merchants" as used herein, shall be defined as meaning all persons engaging in the sale at retail of goods, wares and merchandise within the corporate limits of the City of New Orleans and who, for the purpose of carrying on such business, hires, leases, or occupies, either in whole or in part, a room, building, or other structure for the exhibition and sale at retail of such goods, wares, and merchandise, and with the intention to close out or discontinue such business within a period of one year from the date of the commencement thereof.

The provisions of this Section shall not apply to any person selling fruits, vegetables or farm products when raised by such vendor, or to any person who conducts a sale pursuant to statute or court order.

I. It shall be unlawful for any transient vendor canvasser, solicitor or merchant to sell at retail or offer for sale at retail within the corporate limits of the City of New Orleans any goods, wares or merchandise except in accordance with the provisions of this section.

2. Every transient vendor, canvasser, solicitor or merchant subject to the provisions of this section, before selling at retail, or offering for sale at retail, within the City of New Orleans any goods, wares or merchandise, either from stock or by sample, shall make application to the Director of Finance of the City of New Orleans for a permit to carry on such business in the City of New Orleans. Such application shall be in writing, duly sworn to by the applicant in person, or by the applicant's duly authorized representative, and shall contain the following information.

(a) The name of the person having the management or supervision of such business during the time it shall be carried on in the City of New Orleans; the address of such person while engaged in such business in the City of New Orleans, and the capacity in which such person will act; that is, whether as proprietor or agent, and the name of the person for whose account the business shall be carried on, and if a corporation, under the laws of what state the same is incorporated.

(b) Three business references.

(c) The place where the owner of such business conducts or maintains an established place of business.

(d) The place in the City of New Orleans where it is proposed to carry on such business, and the length of time during which it is expected or proposed that such business shall be conducted.

(e) The place, other than the permanent place of business of the owner, where such transient vendor, canvasser, solicitor or merchant within the six months next preceeding the date of such application conducted or

carried on a temporary or transitory business, stating the nature thereof and giving the post office and street addresses of any building or office in which such business was so conducted.

(f) A statement of the nature, character and quantity of the goods, wares or merchandise to be sold at retail or offered for sale at retail in the City of New Orleans and the invoice value of such goods, and a statement as to whether the goods are to be sold at retail from stock in possession or by sample, and whether the same are to be sold at retail at auction or public outcry, or by personal solicitation, or otherwise. Bills or invoices of purchase of goods shall be attached to the application when demanded by the Director of Finance in the [part of manuscript missing]

(g) A brief statement of the nature and character of the advertising done or to be done in order to attract customers, and, if required by the Director of Finance, copies of all advertising, whether by handbills, circulars, newspaper advertising or otherwise, shall be attached to the application as exhibits thereto.

(h) The number, either of arrests or convictions of misdemeanors or crimes, and the nature of the offenses for which arrested or convicted, if any.

(i) To the application must be appended a letter from the firm for which the applicant purports to do business, authorizing the applicant to act as its representative.

3. It shall be unlawful for any transient vendor, solicitor, canvasser or merchant to engage in business until he shall have first applied to and

obtained a permit to engage in business, in accordance with the provisions of this Section and especially the provisions of paragraph 2 of this Section, and has paid all taxes and fees required by law for the transaction of such business in the City of New Orleans. It shall be the duty of the Director of Finance to issue such permit in writing which shall state the date same is issued, the nature of the business authorized to be carried on and the expiration date of said permit, the place where such business may be carried on under such permit, and the name of the person or persons authorized to carry on the same, which permit shall be signed by the Director of Finance or his authorized representative. The permit so issued shall be posted conspicuously in the place of business named therein. In the event the person applying for such permit shall desire to do business in more than one place, then separate permits shall be applied for and issued for each place of business, and shall be posted conspicuously in each place of business, and the fee herein provided for shall be paid for each permit.

4. The violation of any of the provisions of this Section, or the doing of business otherwise than provided in the application and permit issued thereon, shall constitute a forfeiture of the permit, and the Director of Finance shall suspend the operation of such permit not to exceed ten days, and upon the request of the holder of such permit, grant a hearing and rule upon such forfeiture. Should the Director of Finance find that there has been a violation of the condition of the permit or of this Section, working a forfeiture of the permit, such permit shall be immediately forfeited, surrendered, and cancelled. A forfeiture of the permit shall not entitle the transient vendor, canvasser, solicitor or merchant to any refund of taxes or fees paid.

5. Immediately upon issuing any permit provided for in Section 46-7, the Director of Finance or any of his deputies shall at any time thereafter and at all reasonable hours make an inspection of the place of business as provided in said permit and shall determine whether or not such business is carried on or conducted by the person or persons and in the manner provided in the permit, and the application upon which the permit was issued, and whether the permit is posted as provided by Section 46-7, and whether or not the other provisions of said Section are being observed in the carrying on of such business.

6. In order to defray the cost and expense of the enforcing of this Section, every such transient vendor, canvasser, solicitor or merchant subject to the provisions of this Section, shall, in addition to all taxes, privileges and fees required by law to be paid for the transacting of such business in the City, pay a permit fee of $250.00, which shall be paid to the Director of Finance, or to his designated deputy. All permit fees collected under this Section 46-7 shall be transmitted to the City Treasurer in accordance with Section 46-5 of this Chapter.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS MAR 4, 1965.

/s/ JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor
on Mar 4, 1965

APPROVED: Mar 5, 1965
/s/V. H. SCHIRO
M A Y O R

Returned by the Mayor
on Mar 5, 1965
at 11:00 A.M.

/s/ ROGER L. SARRAT
CLERK OF COUNCIL

APPENDIX "F"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, MAY 28, 1970

CALENDAR NO. 4712

NO. 4346 MAYOR COUNCIL SERIES

BY: COUNCILMAN DiROSA

AN ORDINANCE to amend Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, by adding new paragraph (41) to Section 46-1 relative to permits required for various callings or occasions.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by adding new paragraph (41) to Section 46-1.

"(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or unnatural sex acts or otherwise appeal to sexually prurient interests and which establishments cater exclusively to adults
. . . . . $10,000.00

SECTION 2. The provisions of this Ordinance shall become effective immediately and the Director of Finance shall collect one-half (½) year permit fee for the remainder of 1970 and a full year permit fee each year thereafter."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS JUL 16 1970.

/s/ JAMES A. MOREAU
PRESIDENT OF THE COUNCIL

Delivered to the Mayor on JUL 16 1970

Approved: JUL 21 1970

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
on JUL 21 1970 at 9:00 A.M.

/s/ ROGER L. SARRAT
CLERK OF COUNCIL

CRS 70-137
mc

APPENDIX "G"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, JULY 16, 1970

CALENDAR NO. 4744

NO. 4359 MAYOR COUNCIL SERIES

BY: COUNCILMAN MOREAU

AN ORDINANCE to amend Chapter 46-1 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, relative to a schedule of fees for certain permits, by deleting Paragraph (1) in its entirety.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46-1 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Paragraph (1) in its entirety and substituting in lieu thereof the following:

(1) To sell novelties, etc. on the city streets:

A. For a fixed location to sell novelties, etc.:

(a) During the Mardi Gras season beginning on January 6 through Mardi Gras Day $50.00

(b) There shall be a $50.00 deposit on these permits to guarantee payment of sales tax at the end of the Mardi Gras season.

(c) A specific location can be assigned, but not guaranteed by the City.

(d) These permits shall be non-transferable.

B. For moving vendors

(a) During the Mardi Gras season beginning on January 6 through Mardi Gras Day $25.00

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS AUG 6 1970.

/s/ JAMES A. MOREAU
PRESIDENT OF THE COUNCIL

Delivered to the Mayor on AUG 6 1970
Approved: AUG 7 1970

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
on AUG 7 1970 at 9:30 A.M.

/s/ROGER L. SARRAT
CLERK OF COUNCIL

CRS 70-76
mc

APPENDIX "H"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, JULY 16, 1970

CALENDAR NO. 4745

NO. 4360 MAYOR COUNCIL SERIES

BY: COUNCILMAN MOREAU

AN ORDINANCE to amend Chapter 46-1 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, relative to a schedule of fees for certain permits, by deleting Paragraph (14) in its entirety.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46-1 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, relative to a schedule of fees for certain permits, be and is hereby amended by deleting Paragraph (14) in its entirety.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS AUG 6 1970.

/s/ JAMES A. MOREAU
PRESIDENT OF THE COUNCIL

Delivered to the Mayor on AUG 6 1970
Approved: AUG 7 1970

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
on AUG 7 1970 at 9:30 A.M.

/s/ ROGER L. SARRAT
CLERK OF COUNCIL

CRS 70-76
mc

APPENDIX "I"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, NOVEMBER 12, 1970

CALENDAR NO. 4821

NO. 4439 MAYOR COUNCIL SERIES

BY: COUNCILMAN JOHN D. LAMBERT, JR.
(BY REQUEST)

AN ORDINANCE to amend Ordinance Number 828, M.C.S. known as the Code of the City of New Orleans, Chapter 46, relative to a schedule of fees for certain permits, by redrafting Section 46-5 and Sub-sections (1) through (40) of Section 46-1, deleting Section 46-6 and adding Sections 46-14 and 46-15.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46 of Ordinance Number 828, M. C. S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Section 46-5 in its entirety and substituting in lieu thereof the following:

SECTION 46-5. FEES TO GO TO GENERAL FUND

The Collector of Revenue shall transmit, day by day, as collected by him, to the Bureau of

Treasury all moneys and fees received for the issuance of the permits required by this chapter. The Bureau of the Treasury upon the receipt of such moneys and fees shall immediately depoist them in the General Fund.

SECTION 2. That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Sub-sections (1) through (40) of Section 46-1 in their entirety and substituting in lieu thereof the following:

SECTION 46-1

(1) To sell the following items on city streets during Mardi Gras season beginning January 6 thru Mardi Gras Day:

A. For a fixed location

(a) (1) To sell novelties $50.00
(2) To sell candies, nuts and confections $50.00
(3) To sell sandwiches and soft drinks $50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras season.

(c) A specific location can be assigned but not guaranteed by the City.

B. For moving locations

(1) To sell novelties $25.00
(2) To sell candies, nuts and confections $25.00
(3) To sell sandwiches and soft drinks $25.00

(2) To sell novelties on the city streets other than during the Mardi Gras season
Per sales outlet, for one year ... $25.00

(3) To sell candies, nuts and confections on foot or from pushcarts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year $25.00

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year $25.00

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year $25.00

(6) To peddle cooked food, cakes, pies, etc. other than during the Mardi Gras season.
(a) Per sales outlet, per half-year $25.00
(b) Per sales outlet, per year ... $50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places
per sales outlet, per year $25.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles
per vehicle, per year $50.00

(9) To sell home-manufactured articles or homegrown products on foot
per year $25.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art

on public property in immediate vicinity of Jackson Square
per year $40.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc. on city streets or public places
per year $15.00

(12) To sell tickets to supper to be held in private homes
per event $15.00

(13) Demonstrations of food products or devices in public places or markets, etc.
per engagement $25.00

(14) To distribute samples, canvass on city streets or from house to house
per year
(a) for crew manager $25.00
(b) for each crew member $15.00

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property
(a) per year $100.00
(b) per month $15.00

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed
per year $25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph
per year $250.00

(18) To operate a hand organ in the city streets
per year $15.00

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Sections 51:31 to 51:41 of the Revised Statutes of Louisiana
per sale $25.00

(20) Weighing devices, etc. on sidewalks or in public places
per nickel machine, per year $25.00
per penny machine, per year ... $15.00

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted
per month $25.00

(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis per year in addition to license $100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.
per year $100.00

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:
(a) Admission not more than 75¢, per event $15.00
(b) Admission more than 75¢, per event $25.00

(25) For amateur and professional prizefights or boxing and wrestling contests:

(a) Admission not more than 75¢, per event $15.00

(b) Admission more than 75¢, per event $25.00

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected

(a) Admission not more than 75¢ or by invitation
per event $15.00

(b) Admission more than 75¢, per event $25.00

(27) For Carnival Balls $25.00

(28) For philarmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner

(a) Admission not more than 75¢ or by invitation
per event $15.00

(b) Admission more than 75¢ .. $25.00

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged
per year $50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no

admission is charged or fee exacted
per year $25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner
per year $100.00

(32) For dancing when admission is charged:

(a) Admission not more than 75¢, per event $15.00

(b) Admission not more than $1.99, per event $25.00

(c) Admission $2.00 or more, per event $50.00

(33) For a private dance in a public hall per event $15.00

(34) To give a rummage sale
per event $5.00

(35) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof
per location, per year $250.00

SECTION 3, That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Section 46-6 in its entirety.

SECTION 4. That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by adding Section 46-14 as follows:

SECTION 46-14 PEDDLING NOVELTIES, SOUVENIRS AND FOODS–PROHIBITED NEAR SCHOOLS

It shall be unlawful to sell novelties, souvenirs, candies, nuts, confections, ice cream, ice cream bars, hot tamales, hot dogs, sandwiches, soft drinks, cakes, pies, fruits and vegetables on the city streets within two (2) blocks of any elementary Or secondary school when said school is in session.

SECTION 5. That Chapter 46 of Ordinance Number 828, M.C.S., known as the code of the City of New Orleans, be and is hereby amended by adding Section 46-15 as follows:

SECTION 46-15 PENALTIES AND INTEREST

All mayoralty permits must be obtained prior to the occasion for which it is issued. Should applicant fail to secure the permit prior to the occasion, the following penalties and interest shall apply:

A. Mayoralty permits acquired on a regular yearly basis shall become delinquent February 1 of that year. If the regular yearly permit is not obtained by February 1 of that year, there shall be interest added to the fee at the rate of eight per centum (8%) per annum from the due date until paid. In addition to the interest that may be so added, a penalty shall be imposed at the rate of twenty per centum (20%) of the fee if the failure to obtain said permit is for not more than thirty days and with an additional twenty

per centum (20%) for each additional thirty days or fraction thereof during which the failure continues, not to exceed sixty per centum (60%) of the amount of the fee.

B. Mayoralty permits acquired on other than a regular yearly basis shall become delinquent at the start of the occasion. If the permit has not been obtained prior to the occasion, there shall be interest added to the fee at the rate of eight per centum (8%) per annum from due date until paid. In addition to the interest that may be so added, a penalty shall be imposed at the rate of fifty per centum (50%) of the fee.

C. The Director of Finance may, at his discretion, for good cause, waive, in whole or in part, any of the penalties herein provided.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS DEC 18 1970

/s/ JOSEPH V. DI ROSA
PRESIDENT OF THE COUNCIL

Delivered to the Mayor on DEC 21 1970
Approved: DEC 22 1970

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
on DEC 22 1970 at 11:30 A.M.

/s/ ROGER L. SARRAT
CLERK OF COUNCIL

APPENDIX "J"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, MAY 6 1971

CALENDAR NO. 4967

NO. 4555 MAYOR COUNCIL SERIES

BY: COUNCILMAN LAMBERT (By request)

AN ORDINANCE to amend and reordain Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans relative to a schedule of fees for certain permits and regulations governing these permits and to amend Chapter 46 of said Code by adding thereto a new section, Section 46-16 relating to penalty for failure to comply with the regulations.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS that Chapter 46 of Ordinance Number 828, MC.S., known as the Code of the City of New Orleans be and is hereby amended by adding to Section 46-1 after the words "the date upon which it will expire" the following:

> and shall be in addition to any other tax or license to which permittee may be liable.

SECTION 2. That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding to Section 46-1, subsection (1) A. (b) the following:

> This deposit will be forfeited 30 days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans.

SECTION 3. That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding to Section 46-1, subsection (1) A. the following:

SECTION 46-1

(1)A. (d) Vendors at fixed locations on public streets, property or right-of-ways may set up their vehicles or stands during parade time only. Parade time shall be defined as that time commencing two (2) hours before the start of a parade and ending two (2) hours after the passing of the parade. This provision will not apply when there is more than one parade on any Calendar Day in which case vendor must move two (2) hours after the end of the last parade for that Calendar Day.

(e) Where the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the city shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of

Chapter 38 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width.

(h) All vendors selling from fixed locations shall have the mayoralty permit as provided for in this section publicly displayed by the permittee at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras permits for vendors from fixed locations whether on private or public property shall be issued for the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. to the river side of Dauphine St.

SECTION 4, That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans is hereby further amended by adding to Section 46-1, subsection (1) B., the symbol (a) in front of the words "For Moving Vendors" and by adding subsections as follows:

SECTION 46-1

(1)B. (b) All moving vendors must keep moving except when making a sale.

(c) The Department of Finance shall provide moving vendors at their cost with a Mardi Gras Mayoralty Badge which must

be publicly displayed on their person at all times and failure to do so shall constitute a violation of this chapter. A permittee shall be required to issue a Mardi Gras Mayoralty badge to each of his agents or employees and failure to do so shall constitute a violation of this Chapter by the permittee.

(d) No Mardi Gras moving vendors shall be permitted in the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. and to the river side of Dauphine St.

SECTION 5. That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby further amended by deleting (6) (a) in its entirety and by deleting the sumbol (b) in subsection (6) in front of the words "Per sales outlet".

SECTION 6. That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding Section 46-16 as follows:

SECTION 46-16. PENALTY. Persons who fail to obtain said permit or to comply with any of the regulations contained in this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the punishment prescribed in Section 1-6 of the Code of the City of New Orleans. A permittee so convicted shall forfeit said permit and not be entitled to a refund of the fees paid therefor.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS MAY 13 1971

/s/ JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on MAY 13 1971
Approved: MAY 17 1971

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
on MAY 17 1971 at 1:30 P.M.

/s/ ROGER L. SARRAT
CLERK OF COUNCIL

APPENDIX "K"

ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS

CITY HALL, SEPTEMBER 23, 1971
CALENDAR NO. 5112

No. 4744 MAYOR COUNCIL SERIES
BY COUNCILMAN DI ROSA

AN ORDINANCE to amend Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans by amending and re-ordaining the first paragraph of Section 46-1 and by adding subsection (36) to Section 46-1 relative to mayoralty permits for vendors of newspapers and magazines and vendors of flowers and to add Section 46-1.1 relative to the validity of certain mayoralty permits in the Vieux Carre.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS THAT Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by deleting the first paragraph of Section 46-1 in its entirety and inserting in lieu thereof the following: "Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to

hold meetings or rallies or public entertainment in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however, are not valid in the Vieux Carre except as provided in Section 46-1.1 of this Chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:"

SECTION 2. THAT Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding Section 46-1 (36) to read as follows:

"SECTION 46-1.

(36) To sell flowers on the city sidewalks or streets
Per sales outlet, per year $50.00

SECTION 3. THAT Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by adding Section 46-1.1 as follows:

"SECTION 46-1.1. PERMITS VALID IN THE VIEUX CARRE Permits designated by the following numbers of Section 46-1 are valid within the area designated as the Vieux Carre, which is defined as the area bounded by the River, the Uptown side of Esplanade Avenue, the River side of North Rampart Street and the Lower side of Iberville Street, to wit: Sections (5), (10), (12), (19), (21), (24) through and including (36) and (41).

SECTION 4. THAT the effective date of this ordinance shall be January 1, 1972.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS Dec. 8, 1971.

/s/ JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on Dec. 8, 1971.
Approved: Dec. 9, 1971

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
on Dec. 9, 1971 at 9:30 A.M.

/s/ ROGER L. SARRAT
CLERK OF COUNCIL

cc: 183
sah

APPENDIX "L"

ORDINANCE
(AS AMENDED)

CITY OF NEW ORLEANS

CITY HALL, SEPTEMBER 23, 1971

CALENDAR NO. 5113

NO. 4746 MAYOR COUNCIL SERIES

BY: COUNCILMAN DI ROSA

AN ORDINANCE to amend Chapter 14 of Ordinance Number 828 M. C. S., known as the Code of the City of New Orleans, by adding Section 14-40, relative to solicitations in the Vieux Carre.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Chapter 14 of Ordinance Number 828 M. C. S., known as the Code of the City of New Orleans be and the same is hereby amended by adding Section 14-40 to read as follows:

SECTION 14-40

SOLICITATIONS FOR CHARITY, ETC., PROHIBITED IN VIEUX CARRE.

It shall be unlawful to solicit money, subscriptions, advertising, gifts in kind or contributions or sell tickets, or magazines for any charitable, religious, educational or benevolent purposes as herein set forth on the sidewalks, streets, malls or squares in the section known as the Vieux Carre which is defined as the area

bounded by the River, the Uptown side of Esplanade Avenue, the River side of North Rampart Street and the Lower side of Iberville Street.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS DEC. 15, 1971

/s/ JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on DEC. 15, 1971
Approved: DEC. 17, 1971

/s/ MOON LANDRIEU
M A Y O R

Returned by the Mayor
On DEC. 17, 1971 at 11:00 A.M.

/s/ ROGER L. SARRAT
CLERK OF COUNCIL

CC 71-191

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS Dec. 8, 1971.

/s/ JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on Dec. 8, 1971.
Approved: Dec. 9, 1971

MOON LANDRIEU
MAYOR

Returned by the Mayor
on Dec. 9, 1971 at 9:30 A.M.

/s/ ROGER L. SARRAT
CLERK OF COUNCIL

cc: 183
sah

APPENDIX "M"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL April 6, 1972

CALENDAR 5244

NO. 4822 MAYOR COUNCIL SERIES

BY: COUNCILMAN DI ROSA

AN ORDINANCE to amend Chapter 46 of Ordinance No. 828 M.C.S. known as the Code of the City of New Orleans relative to vendors.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46 of Ordinance No. 828 M.C.S. known as the Code of the City of New Orleans, be and is hereby amended by amending Section 46-1.1 to add the following thereto:

> "Vendors who have continuously operated the same business within the Vieux Carre under the authority of this Chapter for eight or more years prior to January 1, 1972 may obtain a valid permit to operate such business within the Vieux Carre."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS APR 13 1972

/s/ JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on APR 13 1972
Approved: APR 17 1972

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
APR 17 1972 at 3:30 PM

/s/ ROGER L. SARRAT
CLERK OF COUNCIL

CRS 72-152
at

APPENDIX "N"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL August 31, 1972

CALENDAR NO. 5383

NO. 4957 MAYOR COUNCIL SERIES

BY: COUNCILMAN DIROSA

AN ORDINANCE to amend Section 46-1.1. of Chapter 46 of Ordinance Number 828 M. C. S., known as the Code of the City of New Orleans, relative to permits valid in the Vieux Carre.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Section 46-1.1. of Chapter 46 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, be and the same is hereby amended and reordained to read as follows:

"Section 46-1.1. Permits valid in the Vieux Carre. Permits designated by the following numbers of Section 46-1 are valid within the area designated as the Vieux Carre, which is defined as the area bounded by the river, the uptown side of Esplanade Avenue, the river side of North Rampart Street and the lower side of Iberville Street, to

wit: Sections (10), (12), (19), (21), (24) through and including (36) and (41)."

"Vendors who have continuously operated the same business within the Vieux Carre under the authority of this Chapter for eight or more years prior to January 1, 1972 may obtain a valid permit to operate such business within the Vieux Carre."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS SEP 21 1972

/s/ JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on SEP 21 1972
Approved: SEP 28 1972

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor on
SEP 28 1972 at 11:45 PM

/s/ CAROL L. BREAUX
ACTING CLERK OF COUNCIL

APPENDIX "O"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL February 8, 1973

CALENDAR NO. 5537

NO. 5085 MAYOR COUNCIL SERIES

BY: COUNCILMAN DIROSA (BY REQUEST)

AN ORDINANCE to amend Chapter 46 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, by amending Section 46-1, relative to Mayoralty Permits for Vendors during the Mardi Gras Season.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS THAT Chapter 46 of the Ordinance #828M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Section 46-1 (1) in its entirety and inserting in lieu thereof the following:

SECTION 46-1

(1)A. Definitions:

1. "Mardi Gras Season" is defined as those days and nights commencing eleven (11) days before Mardi Gras and continuing until midnight on Mardi Gras day.

2. "Parade Route" is defined as that area extending one (1) city block in either direction of the streets used by the various parades while the parade is in progress.
3. "Parade Time" is defined as that time commencing two (2) hours before the starting time of a parade and ending two (2) hours after the passing of a parade, but no vendor shall sell or display his wares within the Central Business District which is defined as the area bounded by the River, Esplanade Avenue, Claiborne Avenue and Howard Avenue, prior to 6:00 p.m. on weekdays, except Mardi Gras Day. On weekends and on Mardi Gras Day when there is more than one parade on any Calendar Day the vendor must move two (2) hours after the end of the last parade for that Calendar day.
4. "Vehicle" is defined as a conveyance which is licensed by the Motor Vehicle Division of the Louisiana State Department of Safety.

B. To sell the following items on City Streets along the designated "Parade Route" during "Mardi Gras Season":

1. For a Fixed Location:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) $50.00
(2) Candy, nuts and confections . $50.00
(3) Novelties $50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras Season. This deposit will be forfeited thirty (30) days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not

restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, may set up their vehicles during "Parade Time" only.

(e) When the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the City shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance #828 M.C.S., Code of the City of New Orleans relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width. Vendors must sell and display from a "vehicle"; no stands, card tables or the like shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(h) All vendors selling from fixed locations shall have the Mayoralty Permit as provided for in this section publicly displayed at his place of business and failure to do so shall constitute a violation of this Chapter.

(i) No Mardi Gras Mayoralty permits shall be issued for vendors from fixed locations on public streets, sidewalks, alleys, parks or squares in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(j) All applicants of Mardi Gras Mayoralty Permits to sell food and/or drinks on public or private property must show proof of compliance with all regulations and requirements of the City Board of Health and the Department of Fire, Fire Prevention Bureau before permit can be issued.

2. For Moving Locations:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) $25.00
(2) Candy, nuts and confections . $25.00
(3) Novelties $25.00

(b) There shall be a $25.00 deposit on each permit to guarantee payment of sales tax as provided in Section 56-41, of Ordinance #828, M.C.S., Code of the City of New Orleans at the end of the Mardi Gras Season. This deposit will be forfeited 30 days after Mardi Gras, if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales and use tax in accordance with Chapter 56 of Ordinance #828 M.C.S, Code of the City of New Orleans.

(c) All moving vendors must keep moving except when making a sale. No stands, card tables or the like, except handcarried displays, shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral

grounds or rights-of-way for the sale or display of goods.

(d) For each permit issued one (1) Mardi Gras Mayoralty Badge with a corresponding number shall be purchased by the permittee from the Department of Finance, which badge must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this Chapter.

(e) Mardi Gras Mayoralty Permits for moving locations shall be invalid in the Vieux Carre as defined in Section 65-6 of Ordinance 828, M.C.S., Code of the City of New Orleans.

(f) Mardi Gras Mayoralty Permits for moving locations shall only be valid during "Parade Time" along designated "Parade Routes".

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS February 15, 1973

/s/ JAMES A. MOREAU
PRESIDENT OF THE COUNCIL

Delivered to the Mayor On Feb. 15, 1973
Approved: February 19, 1973

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
Feb. 19, 1973 at 3:20 P.M.

/s/ JOSEPH C. PETERSON
CLERK OF COUNCIL

APPENDIX "P"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, February 8, 1973

CALENDAR NO. 5538

NO. 5086 MAYOR COUNCIL SERIES

BY: COUNCILMEN DI ROSA AND DUPUY

An Ordinance to amend Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans, by amending and reordaining Section 46-1 relative to permits.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS That Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by amending and reordaining the first paragraph of Section 46-1 to read as follows: "Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be

liable. Such permits, however, are not valid within the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South, except as provided in Section 46-1.1 of this Chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:"

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS February 15, 1973

/s/ JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on February 15, 1973
Approved: February 19, 1973

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
on February 19, 1973 at 3:20 P.M.

/s/ JOSEPH C. PETERSON
CLERK OF COUNCIL

APPENDIX "Q"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, FEBRUARY 8, 1973

CALENDAR No. 5539

NO. 5087 MAYOR COUNCIL SERIES

BY: COUNCILMEN DI ROSA AND DUPUY

An Ordinance to amend Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans by amending and reordaining Section 46-1.1 relative to Permits valid within the Central Business District.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans be and is hereby amended by amending and reordaining Section 46-1.1 to read as follows:

"SECTION 46-1.1 PERMITS VALID IN THE CENTRAL BUSINESS DISTRICT. Permits designated by the following Subsections of Section 46-1, Subsections (1), (10), (12), (19), (21), (24), through and including (36), are valid within that area of the Central Business District bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South. Vendors who have continuously operated the same business within that area under the authority of this Chapter for eight or

more years prior to January 1, 1972 may obtain a valid permit to operate such business within that area."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS February 15, 1973

/s/ JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on February 15, 1973
Approved: February 19, 1973

/s/ MOON LANDRIEU
MAYOR

Returned by the Mayor
on February 19, 1973 at 3:20 P.M.

/s/ JOSEPH C. PETERSON
CLERK OF COUNCIL

APPENDIX "R"

CHAPTER 46

PERMITS[1]

Section 46-1. Permits required for various callings or occasions; schedule of fees therefor.[2]

Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however are not valid within the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South, except as provided in Section 46-1.1 of this chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:

(1) A. Definitions:

1. "Mardi Gras Season" is defined as those days and nights commencing eleven (11) days before Mardi Gras and continuing until midnight on Mardi Gras day.
2. "Parade Route" is defined as that area extending one (1) city block in either direction of the streets used by the various parades while the parade is in progress.
3. "Parade Time" is defined as that time commencing two (2) hours before the starting time of a parade and ending two (2) hours after the passing of a parade, but no vendor shall sell or display his wares within the Central Business

1. For charter provisions with respect to permits, including a definition of "permit" as there used, see Char., §§ 4-701 and 4-702. For provisions requiring a permit for engaging in various occupations or undertakings dealt with in the other chapters hereof, see those chapters.

2. For licenses on other coin operated machines, see Chapter 16, Coin Operated Machines.

District which is defined as the area bounded by the River, Esplanade Avenue, Claiborne Avenue and Howard Avenue, prior to 6:00 p.m. on weekdays, except Mardi Gras Day. On weekends and on Mardi Gras Day when there is more than one parade on any calendar day the vendor must move two (2) hours after the end of the last parade for that calendar day.

4. "Vehicle" is defined as a conveyance which is licensed by the Motor Vehicle Division of the Louisiana State Department of Safety.

B. To sell the following items on city streets along the designated "parade route" during Mardi Gras Season:

1. For a fixed location:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) $50.00
(2) Candy, nuts and confections ... 50.00
(3) Novelties 50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras Season. This deposit will be forfeited thirty (30) days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, may set up their vehicles during "parade time" only.

(e) When the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the

City shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance #828, M.C.S., Code of the City of New Orleans, relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width. Vendors must sell and display from a "vehicle"; no stands, card tables or the like shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(h) All vendors selling from fixed locations shall have the Mayoralty Permit as provided for in this section publicly displayed at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras Mayoralty Permits shall be issued for vendors from fixed locations on public streets, sidewalks, alleys, parks or squares in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(j) All applicants for Mardi Gras Mayoralty Permits to sell food and/or drinks on public or private property must show proof of compliance with all regulations and requirements of the City Board of Health and the Department of Fire, Fire Prevention Bureau before permit can be issued.

2. For Moving Locations:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) _____ $25.00

(2) Candy, nuts and confections ___ 50.00
(3) Novelties _____ 50.00

(b) There shall be a $25.00 deposit on each permit to guarantee payment of sales tax as provided in Section 56-41, of Ordinance #828, M.C.S., Code of the City of New Orleans, at the end of the Mardi Gras Season. This deposit will be forfeited 30 days after Mardi Gras, if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) All moving vendors must keep moving except when making a sale. No stands, card tables or the like, except hand-carried displays shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(d) For each permit issued one (1) Mardi Gras Mayoralty Badge with a corresponding number shall be purchased by the permittee from the Department of Finance, which badge must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this Chapter.

(e) Mardi Gras Mayoralty Permits for moving locations shall be invalid in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(f) Mardi Gras Mayoralty Permits for moving locations shall only be valid during "parade time" along designated "parade routes".

(2) To sell novelties on the city streets other than during the Mardi Gras season.
Per sales outlet, for one year ..... $ 25.00

(3) To sell candies, nuts and confections on foot or from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(6) To peddle cooked food, cakes, pies, etc., other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places.
Per sales outlet, per year ..... $ 25.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles.
Per vehicle, per year ..... $ 50.00

(9) To sell home-manufactured articles or home-grown products on foot.
Per year ..... $ 25.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square.
Per year ..... $ 40.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc., on city streets or public places.
Per year ..... $ 15.00

(12) To sell tickets to supper to be held in private homes.
Per event ..... $ 15.00

(13) Demonstrations of food products or devices in public places or markets, etc.
Per engagement ..... $ 25.00

(14) To distribute samples, canvass on city streets or from house to house.
(a) For crew manager, per year ..... $ 25.00
(b) For each crew member, per year 15.00

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property.
(a) Per year $100.00
(b) Per month 15.00

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed.
Per year ..... $ 25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph.
Per year $250.00

(18) To operate a hand organ in the city streets.
Per year ..... $ 15.00

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Section 51:31 to 51:41 of the Revised Statutes of Louisiana.
Per sale ..... $ 25.00

(20) Weighing devices, etc. on sidewalks or in public places.
Per nickel machine, per year ..... $ 25.00
Per penny machine, per year 15.00

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted.
Per month ..... $ 25.00

(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis.
Per year in addition to license ——— $100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.
Per year ——— $100.00

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:
(a) Admission not more than 75¢ per event — $ 15.00
(b) Admission more than 75¢ per event ——— 25.00

(25) For amateur and professional prizefights or boxing and wrestling contests:
(a) Admission not more than 75¢ per event — $ 15.00
(b) Admission more than 75¢ per event ——— 25.00

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals, bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected.
(a) Admission not more than 75¢ or by invitation
Per event ——— $ 15.00
(b) Admission more than 75¢ per event ——— 25.00

(27) For Carnival Balls ——— $ 25.00

(28) For philharmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner.
(a) Admission not more than 75¢ or by invitation
Per event ——— $ 15.00
(b) Admission more than 75¢ ——— 25.00

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged.
Per year ——— $ 50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted.
Per year ——— $ 25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner.
Per year ——— $ 100.00

(32) For dancing when admission is charged:
(a) Admission not more than 75¢ per event ——— $ 15.00
(b) Admission not more than $1.99 per event ——— $ 25.00
(c) Admission $2.00 or more per event $ 50.00

(33) For a private dance in a public hall.
Per event ——— $ 15.00

(34) To give a rummage sale.
Per event ——— $ 15.00

(35) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof.
Per location, per year ——— $ 250.00

(36) To sell flowers on the city sidewalks or streets.
Per sales outlet, per year ——— $ 50.00

(37)—(40) Reserved.

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(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or unnatural sex acts or otherwise appeal to sexually prurient interests and which establishments cater exclusively to adults $10,000.00

(C.C.S., Ord. No. 15,510, § 1; C.C.S., Ord. No. 17,633, § 1: C.C.S., Ord. No. 17,989, § 3; M.C.S., Ord. No. 3027, § 1. 3-4-65; M.C.S., Ord. No. 4346, § 1, 7-16-70; M.C.S., Ord. No. 4359, § 1, 8-6-70; M.C.S., Ord. No. 4360, § 1, 8-6-70; M.C.S., Ord. No. 4439, § 2, 12-18-70; M.C.S., Ord. No. 4555, §§ 1—5, 5-13-71; M.C.S., Ord. No. 4744, §§ 1, 2, 12-8-71; M.C.S., Ord. No. 5085, § 1, 2-15-73; M.C.S., Ord. No. 5086, § 1, 2-15-73.)

Section 46-1.1. Permits valid in the central business district.

Permits designated by the following subsection of Section 46-1: Subsections (1), (10), (12), (19), (21), (24), through and including (36), are valid within that area of the Central Business District bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South. Vendors who have continuously operated the same business within that area under the authority of this chapter for eight (8) or more years prior to January 1, 1972 may obtain a valid permit to operate such business within that area. (M.C.S., Ord. No. 4744, § 3, 12-8-71; M.C.S., Ord. No. 4822, § 1, 4-13-72; M.C.S., Ord. No. 4957, § 1, 9-21-72; M.C.S., Ord. No. 5087, § 1, 2-15-73.)

Section 46-2. Additional twenty-five cents charges for Police Pension Fund.

In addition to the charges shown in the schedule in Section 46-1, each applicant shall be required to pay the sum of twenty-five cents for the account of the Police Pension Fund, which additional sum shall be transmitted by the Collector of Revenue, day by day, as collected by him, to the Chief of Bureau of the Treasury. At the end of each month the Chief of Bureau of the Treasury shall remit all such sums so collected for account of the Police Pension Fund to the Board of Trustees, Police Pension Fund, City of New Orleans. (M.C.S., Ord. No. 217, § 1.)